9–8–95
Vol. 60 No. 174
Pages 46749–47038

federal register

Friday
September 8, 1995

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC and Atlanta, GA, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to swais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial-in users should use communications software and modem to call (202) 512–1661 and login as swais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access.* For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $494, or $544 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**512–1806**

Online:

Telnet swais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as swais, no password <enter>, at the second login as newuser <enter>, no password <enter>.

Assistance with online subscriptions	**202–512–1530**

Single copies/back copies:

Paper or fiche	**512–1800**
Assistance with public single copies	**512–1803**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**523–5243**
Assistance with Federal agency subscriptions	**523–5243**

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 12 at 9:00 am

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

ATLANTA, GA

WHEN: September 20 at 9:00 am

WHERE: Centers for Disease Control and Prevention
1600 Clifton Rd., NE.
Auditorium A
Atlanta, GA

RESERVATIONS: 404–639–3528 (Atlanta area)
1–800–688–9889 (Outside Atlanta area)

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register

Vol. 60, No. 174

Friday, September 8, 1995

African Development Foundation
NOTICES
Meetings; Sunshine Act, 46885

Agricultural Marketing Service
RULES
Onions (Bermuda-Granex-Grano) and other onions; grade standards, 46976–46982
Peanuts, domestically produced, 46750–46753
PROPOSED RULES
Beef promotion and research:
Cattlemen's Beef Promotion and Research Board; changes in cattle inventories and cattle beef imports; reapportionment, 46781–46783

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Consolidated Farm Service Agency
See Forest Service
See Natural Resources Conservation Service
See Rural Business and Cooperative Development Service
See Rural Housing and Community Development Service
See Rural Utilities Service
NOTICES
Agency information collection activities under OMB review, 46814

Air Force Department
NOTICES
Environmental statements; availability, etc.:
Luke Air Force Base, AZ; golf course, 46823–46824

Animal and Plant Health Inspection Service
PROPOSED RULES
Animal welfare:
Marine Mammal Negotiated Rulemaking Advisory Committee—
Meetings, 46783–46784

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Computer Associates International, Inc., et al., 46861–46870

Arctic Research Commission
NOTICES
Meetings, 46815

Army Department
See Engineers Corps

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Meetings:
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 46837

Children and Families Administration
RULES
Adoption and foster care data collection under Titles IV–B and IV–E of Social Security Act; reporting and recordkeeping requirements
Correction, 46887

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 46815–46817

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 46819–46820

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Bulgaria, 46820–46821
China, 46821
Malaysia, 46821–46822
Slovak Republic, 46822

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 46885

Consolidated Farm Service Agency
RULES
Program regulations:
Disaster set-aside program, 46753–46758

Corporation for National and Community Service
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 46822–46823

Customs Service
NOTICES
Country of origin marking:
Electrical raceways; Canada, 46883–46884

Defense Department
See Air Force Department
See Engineers Corps
See Navy Department

PROPOSED RULES
Acquisition regulations:
Defense Federal Acquisition Regulation supplement; NAFTA and Trade Agreements Act applicability, 46805–46806

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Job Training Partnership Act—
School-to-work opportunities; local partnerships, 46984–47009
Meetings:
National Educational Research Policy and Priorities Board, 46826
President's Board of Advisors on Historically Black Colleges and Universities, 46826–46827

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Job Training Partnership Act—
School-to-work opportunities; local partnerships, 46984–47009

Employment Standards Administration
See Wage and Hour Division
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 46870–46871

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site Specific Advisory Board—
Kirtland Area Office (Sandia), 46827
Monticello Site, 46827–46828
Nevada Test Site, 46828
Oak Ridge Reservation, 46828–46829
Savannah River Site, 46829
Presidential permit applications:
Arizona Public Service Co., 46829–46830

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Terrebonne Parish et al., LA; hurricane protection project, 46823

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 46768–46771
Clean Air Act:
State operating permits programs—
Arkansas, 46771–46774
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 46802–46803
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 46832–46833
Weekly receipts, 46833–46834
Superfund; response and remedial actions, proposed settlements, etc.:
Jack's Creek/Sitkin Smelting Site, PA, 46834
Water pollution control:
Clean Water Act—
Class I administrative penalty assessments, 46834–46835

Export Administration Bureau
NOTICES
Meetings:
Computer Systems Technical Advisory Committee et al., 46817

Federal Aviation Administration
RULES
Airworthiness directives:
Beech, 46765–46766
Boeing, 46761–46765
General Electric Co., 46758–46761
PROPOSED RULES
Airworthiness directives:
Bell, 46790–46792
Jetstream, 46792–46794
NOTICES
Airport rates and charges; policy statement, 47012–47020
Passenger facility charges; applications, etc.:
Cincinnati/Northern Kentucky International Airport, KY, 46883
Minneapolis-St. Paul International Airport, MN; correction, 46887

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Dial Equipment Minutes (DEM) weighting and Universal Service Fund (USF); assistance mechanisms revision; joint board establishment, 46803–46804
Television broadcasting:
Cable television systems—
Major television markets; list, 46805
NOTICES
Common carrier services:
Multipoint distribution service and instructional television fixed service stations; digital modulation use; pleading cycle; declaratory ruling request, 46835–46836

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 46885

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Holliday Historic Restoration Associates, 46830
Northern States Power Co., 46830
Preliminary permits surrender:
L.B. Industries, Inc., 46831
Applications, hearings, determinations, etc.:
Eastern Shore Natural Gas Co., 46830–46831
Natural Gas Pipeline Co. of America, 46831
Texas Eastern Transmission Corp., 46831–46832
Tosco Corp. et al., 46832
Williams Natural Gas Co., 46832

Federal Reserve System
NOTICES
Federal Open Market Committee:
Domestic policy directives, 46836
Meetings; Sunshine Act, 46886

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 46857

Food and Drug Administration
PROPOSED RULES
Human drugs:
Investigational new drug and new drug applications—
Format and content requirements; demographic subgroups (gender, age, and race); effectiveness and safety data, 46794–46797
NOTICES
Food additive petitions:
Allied Colloids Ltd.; withdrawn, 46837–46838
Human drugs:
Export applications—
Therapeutic products derived from transgenic animals; manufacture and testing for human use; comment request; correction, 46887

Forest Service
RULES
National Forest System timber; sale and disposal:
Timber export and substitution restrictions; administration, 46890–46934
NOTICES
Meetings:
Northwest Sacramento Province Advisory Committee, 46814

General Services Administration
NOTICES
Environmental statements; availability, etc.:
Oroville, WA; port of entry, 46836–46837

Government Printing Office
NOTICES
Meetings:
Online access to Federal Register and other Federal databases; demonstration, 46837

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Public Health Service
NOTICES
Organization, functions, and authority delegations:
Public Health Service, Assistant Secretary for Health, 46842

Health Care Financing Administration
NOTICES
Medicaid:
Disproportionate share hospitals; 1995 FY aggregate payments limitations, 46838–46841

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 46842–46855

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Cold-rolled and corrosion resistant carbon steel flat products and cut-to-length carbon steel plate from—
Australia et al., 46817–46818

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Consolidated Rail Corp., 46857–46858
Norfolk Southern Railway Co., 46858

Justice Department
See Antitrust Division
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 46858–46860
Pollution control; consent judgments:
Arrow Concrete Co., 46860
National Cooperative Refinery Association, 46860–46861

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration
See Wage and Hour Division

Land Management Bureau
NOTICES
Alaska Native claims selection:
English Bay Corp., 46855
Meetings:
Gila Box Riparian National Conservation Area Advisory Committee, 46855
Realty actions; sales, leases, etc.:
New Mexico, 46855–46856
Recreation management restrictions, etc.:
Folsom Resource Area, CA—
Public lands management; supplemental rules, 46856
Resource management plans, etc.:
Arcata Planning Area, CA, 46856
Survey plat filings:
Oregon, 46857

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
E&E Fuels et al., 46871–46872

National Archives and Records Administration
PROPOSED RULES
National Historical Publications and Records Commission; grant program procedures, 46798–46802

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic swordfish, 46775–46779
Pacific Halibut Commission, International:
Pacific halibut fisheries, 46774–46775
PROPOSED RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 46811–46813
Gulf of Alaska and Bering Sea and Aleutian Islands groundfish, 46936–46973
Puerto Rico and U.S. Virgin Islands coral reef resources, 46806–46811
NOTICES
Florida Keys National Marine Sanctuary; area to be avoided during coral rubble and ship debris removal activities in Looe Key National Marine Sanctuary
Time period extension, 46818–46819

National Science Foundation
NOTICES
Meetings:
Design, Manufacture, and Industrial Innovation Special Emphasis Panel, 46872–46874
Industrial Innovation Interface Advisory Committee, 46874
Materials Research Special Emphasis Panel, 46874–46875

Natural Resources Conservation Service
NOTICES
Watershed projects; deauthorization of funds:
Rattlesnake Creek Watershed, OH, 46814

Navy Department
NOTICES
Base realignment and closure:
Surplus Federal property—
Naval Station, Long Beach, CA, 46824–46825
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Devoe Coatings Co., 46825–46826

Neighborhood Reinvestment Corporation
NOTICES
Meetings; Sunshine Act, 46886

Nuclear Regulatory Commission
PROPOSED RULES
Byproduct material; domestic licensing:
One-time extension of certain byproduct, source, and special nuclear materials licenses, 46784–46789
NOTICES
Applications, hearings, determinations, etc.:
PECO Energy Co., 46875

Nuclear Waste Technical Review Board
NOTICES
Meetings, 46875–46876

Occupational Safety and Health Administration
RULES
Safety and health standards, etc.:
Logging operations; correction, 47022–47037

Personnel Management Office
RULES
Allowances and differentials:
Cost-of-living allowances and post differentials (nonforeign areas), 46749–46750
PROPOSED RULES
Employment:
Private sector temporaries; government use, 46780–46781
NOTICES
Health benefits, Federal employees:
Medically underserved areas, 46876

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
NOTICES
Grant and cooperative agreement awards:
American School Health Association, 46841–46842

Rural Business and Cooperative Development Service
RULES
Program regulations:
Disaster set-aside program, 46753–46758

Rural Housing and Community Development Service
RULES
Program regulations:
Disaster set-aside program, 46753–46758

Rural Utilities Service
RULES
Program regulations:
Disaster set-aside program, 46753–46758

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 46876–46878
National Security Clearing Corp., 46878–46879
Philadelphia Stock Exchange, Inc., 46879–46880
Applications, hearings, determinations, etc.:
Public utility holding company filings, 46880–46881

Small Business Administration
PROPOSED RULES
Loans to State and local development companies:
Section 504 loan program; fee collection and interest utilization, 46789–46790

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 46881–46883
Japan; transportation science and technology implementing arrangement; private sector participation, 46881

Treasury Department
See Customs Service

Wage and Hour Division
RULES
Fair Labor Standards Act; domestic service employees; minimum wage and overtime compensation exemptions, 46766–46768

PROPOSED RULES

Fair Labor Standards Act; domestic service employees; minimum wage and overtime compensation exemptions, 46797–46798

Separate Parts In This Issue

Part II

Department of Agriculture, Forest Service, 46890–46934

Part III

Department of Commerce, National Oceanic and Atmospheric Administration, 46936–46973

Part IV

Department of Agriculture, Agricultural Marketing Service, 46976–46982

Part V

Department of Labor, Employment and Training Administration, and Department of Education, Office of Vocational and Adult Education, 46984–47009

Part VI

Department of Transportation, Federal Aviation Administration, 47012–47020

Part VII

Department of Labor, Occupational Safety and Health Administration, 47022–47037

Reader Aids

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

Electronic Bulletin Board

Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
591.....46749
Proposed Rules:
300.....46780

7 CFR
51.....46976
998.....46750
1951.....46753
Proposed Rules:
1260.....46781

9 CFR
Proposed Rules:
1.....46783
3.....46783

10 CFR
Proposed Rules:
30.....46784
40.....46784
70.....46784

13 CFR
Proposed Rules:
108.....46789

14 CFR
39 (5 documents) 46758, 46760, 46761, 46763, 46765
Proposed Rules:
39 (2 documents) 46790, 46792

21 CFR
Proposed Rules:
312.....46794
314.....46794

29 CFR
552.....46766
1910.....47022
Proposed Rules:
552.....46797

36 CFR
223.....46890
Proposed Rules:
1206.....46798

40 CFR
52.....46768
70.....46771
Proposed Rules:
52.....46802

45 CFR
1355.....46887

47 CFR
Proposed Rules:
36.....46803
76.....46805

48 CFR
Proposed Rules:
225.....46805

50 CFR
301.....46774
630.....46775
Proposed Rules:
670.....46806
672.....46936
675 (2 documents) 46811, 46936

Rules and Regulations

Federal Register
Vol. 60, No. 174
Friday, September 8, 1995

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AG73

Cost-of-Living Allowances (Nonforeign Areas)

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing two regulatory changes in the nonforeign area cost-of-living allowance (COLA) program. One change will clarify a reference in the regulations to examples of criteria we use for comparing housing between the allowance areas and Washington, DC. The second change will allow the payment of foreign area post differentials without any corresponding offset from the nonforeign area COLA. OPM is also changing the timing of living-cost surveys conducted in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands. These changes will improve administration of the nonforeign area COLA program.

DATES: These regulations are effective October 10, 1995. These regulations are applicable on the first day of the first pay period beginning on or after October 10, 1995.

FOR FURTHER INFORMATION CONTACT: Allan G. Hearne, (202) 606–2838.

SUPPLEMENTARY INFORMATION: Under section 5941 of title 5, United States Code, and Executive Order 10000, as amended, certain Federal employees in nonforeign areas outside the 48 contiguous States are eligible for cost-of-living allowances (COLA's) when local living costs are substantially higher than those in the Washington, DC, area. Nonforeign area COLA's are paid in Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam and the Commonwealth of the Northern Mariana Islands.

OPM published proposed rules on May 11, 1995 (60 FR 25150), to improve administration of the program by—

(1) Permitting the survey and analysis of living costs at fewer income levels than the three levels currently used;

(2) Clarifying the types of housing units to be surveyed; and

(3) Allowing the payment of foreign area post differentials without any corresponding offset from the nonforeign area COLA.

OPM also announced for comment its intention to change the timing of living-cost surveys conducted in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands, although this change did not require a change in regulation.

There were five respondents to the proposed regulations. In the discussion that follows, we address the comments that we received on each issue and provide our response.

Number of Income Levels Surveyed

We received four comments on the proposal to use only one income level in the surveying of living costs. Each of the four commenters expressed concerns about the impact of the proposed change on COLA rates. One of the commenters favored continued use of the current three-level surveying methodology because of the possibility that the proposed change would not accurately reflect the actual costs of COLA area employees. The other three commenters presented arguments in favor of further study of the issue.

In light of these comments, we have decided not to make the change at this time. OPM will review the issue further in preparation for its report to Congress under the Treasury, Postal Service and General Government Appropriations Act, 1992 (Pub. L. 102–141), as amended. The comments received in response to the proposed regulation will be considered by OPM in its review.

Types of Housing Units Surveyed

We proposed to clarify a parenthetical phrase in current regulations concerning the types of housing units surveyed. We received four comments on this issue. Three commenters agreed with the change, although one said that if the cost index for any COLA area were unintentionally lowered, the change should be revoked. One commenter objected to the change, stating that new homes with their modern architectural preferences, greater amenities, and lower maintenance needs are more valuable than old homes. The commenter added that a comparison of new homes in Washington, DC, with old homes in COLA areas would not be fair and reasonable.

The parenthetical phrase ''(type, size, age)'' in 5 CFR § 591.205(b)(3) was intended to list *examples* of the standard shelter specifications that could be used for comparing housing in the COLA areas with the Washington, DC, area. Because we were not always able to obtain age data on the housing units surveyed, we proposed to remove ''age'' from the listing so as not to give the impression that age was in fact being used in the calculations.

In response to the comments, we are instead prefacing ''type, size, age'' with ''e.g.,'' to make clear that these are examples of the specifications that could be used. We will continue to attempt to obtain age data and may apply age criteria for comparison of housing. If this proves feasible, we will provide a description of the exact procedures in a later **Federal Register** notice.

Nonforeign Area COLA and Foreign Post Differentials

We further proposed to eliminate the requirement in § 591.210(d) that an employee's *nonforeign* area COLA be reduced if the employee also receives a *foreign* area post differential and the two payments combined would otherwise exceed 25 percent of basic pay. This created a disincentive for employees in nonforeign allowance areas to accept long-term temporary assignments in foreign areas. The four comments we received on this proposal all agreed with the change.

Survey Timing

We also announced our intention to change the timing of the summer COLA surveys to correspond with the winter COLA surveys. This does not involve a regulatory change.

We received three comments on this proposal, all of which supported the change, although one respondent reserved full comment pending an opportunity to review the information upon which we based our decision. Therefore, in view of the potential benefit to the public and the

Government of this change and in anticipation of its minimal impact on COLA rates, OPM plans to conduct its living-cost surveys in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands in the first quarter of the calendar year beginning with the next survey, which will be conducted in the first quarter of calendar year 1996.

General Comments

One commenter expressed concern that OPM issued the proposed regulations at a time when a broad examination of the COLA program is scheduled. The commenter felt that some of the changes could have a substantial impact on the program and that the 30-day comment period was not enough time to fully analyze their effect.

Except for the proposed technical clarification relating to standard shelter specifications, all of the changes we proposed were based on comments and recommendations we received on previously published living-cost survey reports. In fact, this particular commenter had proposed, on several previous occasions, analyzing living costs at only one income level, and we had addressed this issue specifically in several previous **Federal Register** notices. Therefore, because we were proposing to adopt recommendations that commenters had previously provided on issues that were not new, we believed that 30 days was sufficient time to review and comment on our proposals. In the future, however, OPM will continue to provide, whenever practical, at least 60 days for interested parties to review and comment on proposals relating to the COLA program.

One commenter responded generally to the cost of housing and grocery items in Alaska and expressed concern about any reduction in COLA rates. These final regulations will have no effect on the COLA rates payable in Alaska. Furthermore, Pub. L. 102–141, as amended, prohibits any reductions in COLA rates through December 31, 1996.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. In § 591.205, the second sentence in paragraph (b)(3) is revised to read as follows:

§ 591.205 Comparative cost index.

* * * * *

(b) * * *

(3) * * * Standard shelter specifications (e.g., type, size, age) are selected for each income level. * * *

* * * * *

§ 591.210 [Amended]

3. In § 591.210, paragraph (d) is removed and paragraphs (e), (f), and (g) are redesignated as paragraphs (d), (e), and (f), respectively.

[FR Doc. 95–22316 Filed 9–7–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 998

[Docket No. FV95–998–2FIR]

Amendment of Requirements Established Under Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts for 1995 and Subsequent Crop Years

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with one minor correction, the provisions of an interim final rule that amends for the 1995 peanut crop and subsequent crop years several provisions of the incoming, outgoing, and indemnification regulations established under Marketing Agreement No. 146. The changes recognize industry operating practices and reduce the burden on handlers without compromising the agreement's objective. The objective of the agreement is to ensure that only wholesome peanuts enter edible market channels. This final rule was unanimously recommended by the Peanut Administrative Committee (Committee), the administrative agency for this wholesomeness assurance program.

EFFECTIVE DATE: September 8, 1995.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, or FAX: (941) 299–5169; or Jim Wendland, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; telephone: (202) 720–2170, or FAX: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 146 (7 CFR part 998) regulating the quality of domestically produced peanuts, hereinafter referred to as the agreement. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this 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 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.

There are about 75 handlers of peanuts subject to regulation under the agreement, and about 47,000 peanut producers in the 16 States covered under the program. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the

producers may be classified as small entities.

In 1994, the reported U.S. production, mostly covered under the agreement, was approximately 4.25 billion pounds of peanuts, a 25 percent increase from the short 1993 crop. The preliminary 1994 peanut crop value is $1.23 billion, up 19 percent from the 1993 crop value.

The objective of the agreement, in place since 1965, is to ensure that only wholesome peanuts enter edible market channels. About 70 percent of U.S. shellers (handlers), handling approximately 95 percent of the crop, have voluntarily signed the agreement. Under the agreement, farmers' stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin contamination. Signatory handlers who comply with these requirements may be eligible for indemnification of losses for individual lots of their peanuts which test positive to aflatoxin. Indemnification and administrative costs are paid by assessments levied on handlers signatory to the agreement.

The Committee, which is composed of producers and handlers of peanuts, meets to review the rules and regulations effective on a continuous basis for peanuts regulated under the agreement. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

The Committee met on March 22 and 23, 1995, and unanimously recommended several changes to incoming, outgoing, and indemnification regulations for 1995 and subsequent crop peanuts.

The Committee recommended amending § 998.100 Incoming quality regulation by revising paragraph (c) to provide that commercially acquired lots be designated as Segregation 2 peanuts (rather than Segregation 1) by the Federal or Federal-State Inspection Service (Inspection Service) when exceeding .50 percent freeze damage and/or 14.49 percent loose shelled kernels (LSK's) when the Inspection Service is notified that a contract between the producer and the handler specifies these more restrictive tolerances.

Currently, § 998.100 (b) defines Segregation 1 peanuts as farmers' stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*. Section 998.100 (c) defines Segregation 2 peanuts as farmers' stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*.

The recommendation was not adopted by the Department. The current standards are rules of general applicability which apply to all peanuts without regard to any contractual agreements between individuals. Buyers and sellers are free to agree to a variety of contractual terms. However, such agreements should not have the effect of determining whether peanuts are Segregation 1 or 2 as those terms are defined in the regulations.

Previously, § 998.100(i) Shelled peanuts read ''Handlers may acquire from other handlers, for remilling and subsequent disposition to human consumption outlets, shelled peanuts (which originated from ''Segregation 1 peanuts'') that fail to meet the requirements specified for human consumption in paragraph (a) of the Outgoing Quality Regulation (§ 998.200). Any lot of such peanuts must be accompanied by a valid inspection certificate for the grade factors and must be positive lot identified. * * * Peanuts acquired pursuant to this paragraph shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler, and further disposition shall be regulated by paragraph (h)(1) of the Outgoing Quality Regulation (§ 998.200)''.

This rule continues in effect the revision made in paragraph (i) of § 998.100 to allow movement of shelled peanuts, which originated from Segregation 1 peanuts, without inspection and positive lot identification (PLI), from one handler to another and does not require the receiving handler to hold and mill such peanuts separate from other receipts and acquisitions. The high degree of control that had been in place for such transactions is no longer needed because the peanut industry has changed from small locally owned plants to large corporations with strict quality control procedures. The Committee believes that relaxing the requirements will enable handlers to reduce processing and storage costs and increase movement of peanuts without jeopardizing the agreement's quality control and lot identification objectives.

Section 998.200 Outgoing quality regulation was amended by revising paragraphs (f) and (h)(1) to allow handlers to transfer peanuts to any handler or to domestic commercial storage without PLI and certification of meeting quality requirements when it leaves the first facility. Previously, § 998.200(f) Inter-plant transfer read ''Any handler may transfer peanuts from one plant owned by him to another of his plants or to commercial storage, without having such peanuts positive lot identified and certified as meeting quality requirements, but such transfer shall be only to points within the same production area and ownership shall have been retained by the handler. Upon any transferred peanuts being disposed of for human consumption, they shall meet all the requirements applicable to such peanuts''.

Prior to the issuance of the interim final rule, § 998.200(h) Peanuts failing quality requirements read ''(1) Handlers may sell to or contract with other handlers, for further handling, shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of this section. Lots of peanuts disposed of in this manner must be accompanied by a valid grade inspection certificate, and must be positive lot identified. Transactions made in this manner shall be reported to the Committee by both the seller and the buyer on a form provided by the Committee. Any such peanuts acquired by handlers pursuant to paragraph (i) of the Incoming Quality Regulation (§ 998.100) shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler and further disposition shall be regulated by the requirements specified heretofore or pursuant to paragraph (h)(3) hereinafter''.

This high degree of control is no longer needed. As stated earlier, the peanut industry has changed dramatically from many small locally owned and operated plants to large or multinational corporations with strict quality control procedures located throughout the different production areas in the United States. Relaxing the regulation allows freer movement of peanuts, more efficient use of facilities, and reduced numbers of inspections, resulting in lower costs and a more competitive industry, without compromising the program's quality control objective.

Under paragraph (h) of § 998.200, peanuts failing quality requirements for

disposition to human consumption outlets can be sent to blanchers for reconditioning, to domestic crushers, or exported (when peanuts meet fragmented requirements). In § 998.200 paragraph (h)(2) previously read ''Handlers may blanch or cause to have blanched positive lot identified shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements of paragraph (a) of this section because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin: *Provided,* That such lots of peanuts contain not in excess of 8 percent damage and minor defects combined or 2 percent foreign material. Prior to movement of such peanuts to a blancher, handlers shall report to the Committee, on a form furnished by the Committee, and receive authorization from the Committee for movement and blanching of each such lot. Lots of peanuts which are moved under these provisions must be accompanied by a valid grade inspection certificate and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet specifications for unshelled peanuts, damaged kernels, minor defects, moisture, and foreign material as listed in paragraph (a) of this section and be accompanied by an aflatoxin certificate determined to be negative by the Committee * * *.''

Paragraph (h)(4) of § 998.200 previously read ''Handlers may contract with Committee approved remillers for remilling shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulation: *Provided,* That such lot of peanuts contain not in excess of 8 percent damage and minor defects combined or 10 percent fall through or 2 percent foreign material. Prior to movement of such peanuts under these provisions to a Committee approved remiller, handlers shall report to the Committee, on a form furnished by the Committee, and receive authorization from the Committee for movement and remilling of each such lot. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and must be positive lot identified and the title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a), and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts * * *''

Paragraph (h)(2) of § 998.200 was relaxed by the interim final rule to allow individual handlers to move failing peanuts containing not in excess of 10 percent total unshelled peanuts and damaged kernels or 10 percent foreign material to Committee approved blanchers, rather than reworking (blanching) at their own facilities. Also, paragraph (h)(4) of § 998.200 was similarly relaxed to allow individual handlers to move failing peanuts to Committee approved remillers for remilling shelled peanuts containing not in excess of 10 percent total unshelled peanuts and damaged kernels or 10 percent fall through or 10 percent foreign material.

However, before such peanuts go to human consumption outlets, the peanuts have to be certified as meeting human consumption outlet requirements (must at least meet minimum requirements specified in ''OTHER EDIBLE QUALITY'' (NON-INDEMNIFIABLE) GRADES—WHOLE KERNELS AND SPLITS table of § 998.200(a) and must also be certified ''negative'' (not more than 15 parts per billion) as to aflatoxin).

These changes recognize the current generally more efficient, higher technology processing capabilities of blanchers' and remillers' facilities and practices compared with the typical handler's facility and are intended to provide handlers more reconditioning flexibility. These changes tend to reduce limitations on handlers by allowing them to use blanchers' and remillers' generally more efficient grading and milling facilities to rework such peanuts, improve handlers' competitive position, especially with regards to imported peanuts, by better utilizing peanut supplies and existing facilities and increase peanut movement to higher value markets.

This action also continues in effect the revisions made to paragraph (j) of § 998.200 to exempt certain peanuts, including those of a lower quality than Segregation 1 for domestic crushing, from being assessed to lower the handlers' costs for these lower value peanuts, as authorized by §§ 998.48 Assessments and 998.31 Incoming regulation of the agreement.

The Committee also recommended that this exemption apply to Segregation 1 peanuts for crushing. However, the recommendation was not adopted by the Department because the agreement provides no authority for such an exemption and it would require an amendment to the agreement through formal rulemaking procedures to add such authority. Segregation 1 peanuts are sometimes commingled with Segregation 2 or 3 peanuts. In such cases, the Segregation 1 peanuts take on the identity of the lower quality Segregation 2 or 3 peanuts, because it dilutes the quality of higher quality Segregation 1 peanuts. In those cases, the quantity of former Segregation 1 peanuts which were commingled are exempt from program assessments.

Further, this action amends § 998.300 Terms and conditions of indemnification by establishing reduced indemnification values specified in paragraphs (e), (h), (i), and (x); and revising paragraph (z) by specifying a reduced ceiling and/or number of claims to ''trigger'' payments. The indemnification value of rejects and entire lots is reduced to 35 cents per pound from the previous 45 cents. The interim final rule failed to mention that the reduction in indemnification value also required changes to paragraph (e) of § 998.300. This inadvertent omission is corrected in this document.

These changes are intended to reduce the problem encountered by the Committee and the Department on 1993 crop indemnification claims when the indemnification payment ceiling and number of claims was significantly exceeded and the Department was asked for and approved the authority for the Committee to spend up to $500,000 from the indemnification reserve fund to pay the excess claims. These changes are expected to reduce by $2 million the cost to the Committee for indemnification payments, and reduce the possibility of handlers making indemnification, rather than the edible market, the primary market for peanuts when regular market prices are low. When the market is weak some handlers may send their peanuts directly to indemnification rather than incur the cost of reworking the peanuts to improve the quality of the lots enough to sell them in the edible market.

The unchanged portions of the incoming, outgoing, and indemnification regulations currently in effect for 1994 crop peanuts are left in

effect, as is, for 1995 and subsequent crop years.

In accordance with the Paperwork Reduction Act of 1988 (44 U.S.C. Chapter 35), information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0067.

Based on the above, the Administrator of the AMS has determined that this final rule 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 information, it is found that finalizing the interim final rule which was published in the July 14, 1995, issue of the **Federal Register** (60 FR 36205), with one correction adding paragraph (e) to amended § 998.300, will tend to effectuate the declared policy of the Act. That rule provided that interested persons could file comments through August 14, 1995. No comments were received.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) This action continues in effect relaxed requirements for peanut handlers, who voluntarily signed the agreement; and (2) the interim final rule provided that interested persons could file comments through August 14, 1995. No comments were received and the Department is adopting as a final rule the provisions of the interim final rule, with one correction.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending 7 CFR part 998 which was published at 60 FR 36205 on July 14, 1995, is adopted as a final rule and corrected as follows:

In amendatory item 4, on page 36208, in the third column, the 4th line, a reference to ''(e)'', is added between the word ''paragraphs'' and the letter ''(h)''.

Dated: September 1, 1995.

Ronald Cioffi,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–22283 Filed 9–7–95; 8:45 am]

BILLING CODE 3410–02–P

Rural Housing and Community Development Service

Rural Business and Cooperative Development Service

Rural Utilities Services

Consolidated Farm Service Agency

7 CFR Part 1951

RIN 0560–A

Disaster Set-Aside Program

AGENCY: Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Consolidated Farm Service Agency (CFSA) is amending its regulations to implement the ''Disaster Set-Aside (DSA) Program.'' This rule makes the Disaster Set-Aside Program a permanent servicing option available to all CFSA Farm Credit Programs borrowers affected by a natural disaster. Under this program, the distressed borrower will have the opportunity to move the next scheduled annual installment to the end of the loan term. The intended effect is to service disaster victims in an efficient and timely manner while keeping them in business.

EFFECTIVE DATE: Final rule effective September 8, 1995.

FOR FURTHER INFORMATION CONTACT: Kimberly R. Laris, Loan Officer, Consolidated Farm Service Agency, USDA, Farm Credit Programs Loan Servicing and Property Management Division, Room 5449, 14th Street and Independence Avenue SW., Washington, DC 20250–0774, Telephone (202) 720–1659.

SUPPLEMENTARY INFORMATION:

Classification

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

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR, part 3015, subpart V (48 FR 29115, June 24, 1983), Emergency Loans, Farm Ownership Loans, and Farm Operating Loans are excluded, with the exception of nonfarm enterprise activity, from the scope of Executive Order 12372, which requires intergovernmental consultation with state and local officials. The Soil and Water Loan Program, however, is subject to and has complied with the provisions of Executive Order 12372.

Programs Affected

These changes affect the following credit programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans
10.418—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' The issuing agency has determined that this action does not significantly affect the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, an Environmental Impact Statement is not required.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the agency at 7 CFR subpart B of part 1900 and any additional regulations to be published by the Department of Agriculture to implement the provisions of the National Appeals Division as mandated by the Department of Agriculture Reorganization Act of 1994 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Paperwork Reduction Act

The information collection requirements contained in these regulations have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–

0163 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This final rule does not revise or impose any new information collection or recordkeeping requirements from those approved by OMB.

Discussion of Final Rule

The DSA Program was made available to CFSA Farm Credit (FC) Programs borrowers through an interim rule published in the **Federal Register** (59 FR 53079) October 21, 1994, with a 30 day comment period ending November 21, 1994. The program was designed to assist CFSA FC borrowers who were financially distressed because of a natural disaster that hit their area in 1993. The financial distress was nationwide due to heavy flooding in the Midwest and extreme drought in the South. The Agency estimated that considerably more borrowers were affected by disasters in 1993 than in any of the previous five years. In order to assist farmers suffering from delinquencies and possible farm failures, the Agency developed this servicing tool, DSA, that could provide immediate financial assistance without a massive amount of paperwork and restrictive requirements.

Under the DSA program, distressed borrowers may be permitted to move their next scheduled FC annual installment to the end of the loan term to be paid with the final installment. In order to be determined distressed, the borrower's net income must have been reduced as a result of the disaster causing insufficient income to be available to pay all family living and operating expenses, debts to other creditors, and CFSA FC payments. As of June 30, 1995, 6,800 borrowers affected by a 1993 disaster received DSA assistance.

Because of the overall success of the program and the many favorable comments received from borrowers, farm advocacy groups and others, the Agency has amended the regulation to allow DSA to be a permanent servicing tool available to all CFSA FC borrowers affected by a natural disaster.

Discussion of Revisions and Comments

In response to the interim rule, five respondents provided twenty-one comments, two respondents being from farm advocacy groups and three from employees within the Agency. Revisions were made for clarification in answer to comments. The regulations have also been revised to remove administrative procedures. These procedures will instead be available in the agency's internal instructions. Forms and exhibits are available in any CFSA local or state office.

Five comments were received in regard to extending the DSA program to assist borrowers affected by disasters after 1993. Three of the respondents recommended the program be available as a permanent servicing option following all natural disasters while one respondent recommended only extending the program to include 1994 disasters. Only one respondent recommended the program end after assisting farmers affected by the 1993 disasters. After careful consideration and favorable public response from farm advocacy groups and borrowers, the Agency has decided to make the DSA program available as a permanent servicing option to all borrowers affected by a disaster. By making this program available, the Agency believes that borrowers who would not be able to obtain emergency loans under subpart D of part 1945 of this chapter because of percent of loss or lack of collateral, or who cannot receive servicing under subpart S of part 1951, may be able to defer their FC payments in order to stay in business and avoid liquidation. It is also feasible to conclude that if the FC installments are set-aside, any Emergency loan the borrower is eligible for and still needs could be used to pay other creditors or provide for annual operating expenses. The Agency believes that borrowers eligible for this program will receive immediate financial relief from their FC payment obligations in a more expedient manner than under subpart S of part 1951. For example, the application process is simple and easy, unlike the primary loan servicing application under subpart S of part 1951 which requires extensive documentation by both the borrower and the servicing official. There are no additional security requirements to deter the borrower from requesting DSA and the Agency's position is more secure as no debt is written off. Also, based on the actual number of borrowers who received set-aside, the Agency was able to provide financial assistance within a few days whereas under subpart S of part 1951, it takes an average of 90 days to process an application and restructure a loan.

Because this program is promulgated pursuant to section 331A of the Consolidated Farm and Rural Development Act (CONACT) (see discussion in the interim rule at 59 Fed. Reg. 53080, October 21, 1994), the Agency does not consider the program to be a primary loan service program as defined in section 343(b)(3) of the CONACT, which would require the program to be part of the 1951–S process. This would be counterproductive to the purpose of the DSA program which is intended to provide immediate financial relief for one installment only. Moreover, this rule, like the interim rule in section 1951.957, states that borrowers cannot receive both 1951–T and 1951–S servicing when applications for both programs are pending. If DSA is granted, the one delinquent installment eligible for set-aside is serviced and the borrower is no longer delinquent. If 1951–S primary loan servicing is provided, the delinquency is cured by restructuring with or without debt writedown. At any event, as stated in section 1951.957(a)(2), borrowers may resubmit an application in accordance with 1951–S of this part for additional servicing after DSA has been received.

Since the DSA program will be made available to cover future disasters, the Agency has imposed a limitation that restricts future set-aside on a loan if there is already a payment still set-aside. If the borrower received set-aside on three of four loans and later requests set-aside because of another disaster, the borrower may only receive set-aside on the loan that does not already have a payment set-aside. If the set-aside is paid in full, or the loan with set-aside is later restructured under subpart S of part 1951, the set-aside will no longer exist and therefore the loan could again be considered for DSA under future disasters. This limitation was imposed to restrict a continual build up of payments being set-aside to the end of the loan when restructuring the debt under subpart S of part 1951 would have been the most effective servicing action.

One respondent recommended that attorneys for borrowers in bankruptcy be notified of the DSA program with a copy to the borrower. The Agency did not adopt this comment. The letter sent to the borrower is for information only. It is not specifically addressed to the borrower nor does it require the borrower to do anything that if not done, will cause the Agency to liquidate. Furthermore, borrowers in bankruptcy are not serviced under this subpart while under court jurisdiction. Agency regulations for servicing borrowers who have filed bankruptcy petitions are found in subpart A of part 1962.

One respondent suggested that the regulation and the informational letter be clarified to state that if a determination cannot be made based on the borrower's actual records, the borrower may have to provide evidence that all expenses and/or debts could not

be paid as projected. The same respondent suggested that for borrowers whose crop is not harvested until the following year, that actual records for both the disaster year and the year in which the income is received be submitted to the Agency. The Agency adopted the first comment by adding a statement that other information may be requested by the servicing official when needed to make an eligibility determination. Instances when other information may be needed are when the borrower did not have a plan already prepared for the disaster year or the disaster affected the following year's production in which a plan or actual records for that year may be needed. No changes were made as a result of the second comment since the regulation already requires the borrower to provide actual records for the production/marketing period in which the disaster occurred. This requirement should cover those commodities produced in one year and marketed the next. The Agency has also clarified in the eligibility requirements that consideration may be given to loss of income in the following year as a result of the disaster causing insufficient income to pay all expenses and debts for that year. An example may be that the borrower's feed was destroyed causing the borrower to purchase poorer quality feed which in turn caused a decrease in milk production.

Two respondents recommended the regulation be clarified to state that the borrower must have been a borrower at the time of the disaster and continued to be a borrower to the present time. Another respondent recommended that set-aside only be granted on loans outstanding at the time of the disaster. The Agency has adopted these suggestions by requiring that the borrower must have been a borrower and the loan being set-aside must have been outstanding at the time of the disaster. This clarification further enforces the intent of the program to assist borrowers who were affected by a disaster and were unable to make their payments; or if they were able to make their FC payments, they could not pay all their other creditors. If a borrower was not a borrower at the time of the disaster, then there were no payments to the Agency that could not be paid as a result of the disaster. If the Agency made a loan to the borrower after the disaster, a feasible farm and home plan would have been developed in order for the Agency to approve a loan and the affects of the disaster should have already been taken into consideration when the plan was developed. It is not the Agency's intent to make a loan to a borrower and then turn around and set-aside the first installment unless the loan was made prior to the disaster. The Agency has also clarified that borrowers paying under a debt settlement adjustment in accordance with subpart B of part 1956 are not eligible for DSA as these such borrowers are liquidating their debt, not continuing with it.

One respondent recommended that the regulation clarify that borrowers in bankruptcy who are still under court jurisdiction are considered in non-monetary default and are not eligible for the DSA program. The Agency has adopted this recommendation by clarifying that borrowers in bankruptcy or under court jurisdiction are considered in nonmonetary default. Borrowers under a confirmed plan who are still under court jurisdiction may obtain similar type servicing with a modification of their bankruptcy plan through the bankruptcy court as set forth in subpart A of part 1962. The Agency chose to exclude borrowers in bankruptcy from this subpart's servicing because the intent of the program was to expedite the servicing process to resolve the borrower's immediate financial distress. If the borrower is in bankruptcy, court approval is needed, thereby causing additional delays in servicing the borrower.

One respondent recommended an exception to allow borrowers who were restructured after the disaster to receive DSA if the restructure did not take into account the impact of the reduction in income or increase in expenses caused by the disaster. In other words, the impact was not known until harvest season and therefore the restructure did not cure the borrower's financial distress caused by the disaster. While this comment may be well taken since the DSA program was not available until October 21, 1994, these borrowers situations should have already been resolved through the exception authority or considered for 1951–S servicing. Therefore, the Agency did not revise its regulations to incorporate this specific exception. Because the Agency believes that there will be few of these cases in the future, it prefers to rely on its general exception authority contained in section 1951.959 for those few cases which may arise.

One respondent recommended that borrowers who received a confirmed bankruptcy plan after the disaster and are no longer under court jurisdiction should not be eligible for DSA as this is similar to a borrower being restructured under subpart S of part 1951. The Agency did not adopt this comment because generally speaking it has been the Agency's policy to recognize that the Bankruptcy Code provides entirely different relief than the Agency's regulations. For example, section 1951.909(e)(4)(vi) states that a writedown received in bankruptcy will not count toward a borrower's lifetime limit of one writedown nor will it count in the $300,000 per borrower limit.

Three respondents recommended the Agency allow up to the third annual installment to be set-aside in the event the borrower has already paid the installment due after the disaster and the very next installment. The Agency understands the concerns of the respondents. The regulation was published in late October 1994 with borrowers being notified soon thereafter. By this date, many borrowers who were affected by the disaster had already paid their installment due after the 1993 disaster, such as their January 1, 1994 installment, and because they were on an assignment to pay periodic payments throughout the year such as from milk production or hog sales, their January 1, 1995 installment was paid or almost paid by the time the regulation was issued. The same is true for borrowers not on an assignment who paid early in the year from production sales. It is understandable that even though the FC payments were paid, they still may not have been able to pay their other creditors because of the loss they suffered from the 1993 disaster. Borrowers not on an assignment or who did not pay early received full benefit of the DSA program because the income they received was paid to other creditors instead of paying their FC payments. Therefore, in order to provide all borrowers recovering from a disaster with the same opportunity to apply and receive DSA, the Agency has revised the regulations to allow borrowers who were affected by a disaster in 1994 to set-aside the next installment due, up to the third installment due after the disaster occurred. For all disasters thereafter, only the installment due immediately after the disaster or the very next one after that will be set-aside.

Two respondents recommended that the regulation be clarified to limit the amount set-aside to the amount the borrower cannot pay or by how much the borrower needs set-aside to develop a feasible cash flow for the next year. This is consistent with subpart B of part 1924 in which the borrower must pay the FC payments if able to do so, and subpart A of part 1962 for required use of security proceeds. The Agency has adopted this comment by limiting the amount to be set-aside by the lesser of the amount the borrower was unable to pay CFSA during the production/

marketing period in which the disaster occurred, or the amount the borrower was unable to pay other creditors and/or expenses, rounded up to the nearest whole installment. Expenses which the borrower is unable to pay may include the following year's operating and family living expenses if the income or commodities lost from the disaster year would have been used for these purposes, or if normal income security from the disaster year is approved for release under subpart A of part 1962 or otherwise authorized under subpart B of part 1924 for these purposes. Under no circumstances will a portion of the installment be set-aside leaving a balance still due. The portion not set-aside must be paid by the borrower on or before the date exhibit A to FmHA Instruction 1951–T (available in any CFSA local or state office) is signed.

One respondent recommended that the regulation be revised to allow for at least 30 days for the borrower to sign the addendum instead of up to 30 days. This would allow the Agency some flexibility in cases where the Agency's approval is contingent upon the borrower doing something to be eligible, such as paying a portion of the FC payments from proceeds that may not be available until after the 30 day period expires. The Agency has adopted this comment by revising the regulation to allow the County Supervisor to provide for a longer period of time to sign the addendum not to exceed 90 days under extenuating circumstances.

Two comments were received from one respondent to revise the addendum to only state the total amount set-aside on the loan since the Agency's accounting system does not allow the servicing official to calculate the amount of principal and interest that can be set-aside, and to state that if the borrower receives set-aside, the borrower's primary and preservation loan servicing application will be withdrawn, instead of just the primary loan servicing application. The Agency has adopted these comments.

The Agency also added another condition for cancelling and reversing DSA. The interim rule required cancellation when the borrower is later restructured with primary loan servicing. It also allowed for reversal of the DSA prior to the first scheduled annual installment coming due after the DSA is granted when a writedown, buyout, or operating loan assistance is needed. This rule requires cancellation when it is determined that the DSA was unauthorized because it was not provided in accordance with these regulations. If the Agency cancels DSA because the assistance was unauthorized, borrowers will be notified of the reasons for the decision, and provided with an opportunity to appeal. By reserving the authority to cancel DSA when it is unauthorized, the Agency is clarifying inherent Government authority to reverse transactions which are not in accordance with existing law. The Agency has discovered several instances of unauthorized assistance under the interim rule. It is in the public interest to correct these errors.

The Agency has also removed all reference to the 1993 disaster year from this rule since the time period for borrowers affected by a 1993 disaster has passed. (The interim rule allowed until July 1, 1995 to apply). Borrowers affected by a 1994 disaster through the date the final rule is published will have 8 months from the date they are notified of DSA to apply. For all future disasters, borrowers will have 8 months from the date the county is designated a disaster area, which is consistent with the time period to apply for an Emergency Loan in accordance with subpart A of part 1945.

List of Subjects in 7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Debt restructuring.

Accordingly, part 1951, Chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

2. Subpart T, §§ 1951.951 through 1951.1000, is revised to read as follows:

PART 1951—SERVICING AND COLLECTIONS

Subpart T—Disaster Set-Aside Program

Sec.

1951.951 Purpose.
1951.952 General.
1951.953 Notification and request for DSA.
1951.954 Eligibility and loan limitation requirements.
1951.955 – 1951.956 [Reserved]
1951.957 Eligibility determination and processing.
1951.958 Cancellation and reversal of DSA.
1951.959 Exception authority.
1951.960 – 1951.999 [Reserved]
1951.1000 OMB control number.

Subpart T—Disaster Set-Aside Program

§ 1951.951 Purpose.

This subpart sets forth the policies and procedures for the Disaster Set-Aside (DSA) Program. The DSA program is available to Farm Credit (FC) Programs borrowers, as defined in subpart S of this part, who suffered losses as a result of a natural disaster. FC loans that may be serviced under this subpart include Farm Ownership (FO), Operating (OL), Soil and Water (SW), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Economic Opportunity (EO), Softwood Timber (ST), Recreation (RL), and Rural Housing loans for farm service buildings (RHF). Nonprogram (NP) farm type loans may be serviced under this subpart for borrowers who also have FC loans.

§ 1951.952 General.

DSA is a program whereby borrowers who are current or not more than one installment behind on any and all FC loans may be permitted to move one scheduled annual installment for each eligible FC loan to the end of the loan term. The intent of this program is to relieve some of the borrower's immediate financial stress caused by the disaster and avoid foreclosure by the Government. DSA is not intended to circumvent the servicing available under subpart S of this part.

§ 1951.953 Notification and request for DSA.

(a) *Notification*. The Consolidated Farm Service Agency (CFSA) servicing office will notify FC borrowers of the availability of DSA and how to apply within 30 days from the date the servicing office is notified of the disaster designation as determined in accordance with subpart A of part 1945. Only FC borrowers who were borrowers at the time of the disaster and operated a farm or ranch in a county designated a disaster area or contiguous county will be notified. Those borrowers whose FC loan has been accelerated, restructured after the disaster, or who only have NP loans will not be notified. Notification of the DSA program will not affect the notification requirements contained in subpart S of this part.

(b) *Deadline to apply*. All FC borrowers liable for the debt must request DSA within 8 months from the date the disaster was designated, except borrowers affected by a disaster occurring in years 1994 and 1995 where counties or contiguous counties were designated prior to the date of this subpart will have 8 months from the

date of DSA notification. Borrowers may only be considered for DSA one time for each disaster.

(c) *Information needed to apply.*

(1) A written request for DSA signed by all parties liable for the debt; and

(2) Actual production, income, and expense records for the production and marketing period in which the disaster occurred. Other information may be requested by the servicing official when needed to make an eligibility determination.

§ 1951.954 Eligibility and loan limitation requirements.

(a) *Eligibility requirements.* The following requirements must be met to be eligible for DSA:

(1) The borrower must have operated a farm or ranch in a county designated a disaster area or a county contiguous to such an area. The borrower must have been a borrower and operated the farm or ranch at the time of the disaster.

(2) The borrower must have acted in good faith as defined in § 1951.906 of subpart S of this part.

(3) All nonmonetary defaults must have been resolved. This means that even though the borrower has acted in good faith, the borrower may still be in default for reasons, such as, but not limited to: no longer farming, prior lienholder foreclosure, bankruptcy or under court jurisdiction, not properly maintaining chattel and real estate security, not properly accounting for the sale of security, or not carrying out any other agreement made with the Agency.

(4) The borrower must be current or not more than one installment behind on any and all FC loans at the time the scheduled installment will be set-aside. Borrowers paying under a debt settlement adjustment agreement in accordance with subpart B of part 1956 are not eligible.

(5) As a direct result of the disaster, sufficient income was not available to pay all family living and operating expenses, debts to other creditors, and CFSA. This determination will be based on the borrower's actual production and income and expense records for the disaster year and any other records required by the servicing official. Compensation received for losses shall be considered as well as increased expenses incurred because of the disaster. Consideration will also be given to insufficient income for the next production and marketing period following the disaster if the borrower establishes that production will be reduced or expenses increased as a result of the disaster.

(6) After the scheduled installments are set-aside, all FC and NP farm type loans must be current.

(7) The borrower's FC loan has not been accelerated nor has the borrower's debt been restructured under subpart S of this part since the disaster occurred.

(b) *Loan limitation requirements.*

(1) The loan must have been outstanding at the time of the disaster.

(2) Only one unpaid installment for each FC loan may be set-aside. If there is an installment still set-aside from a previous disaster, the loan is not eligible for DSA. If the set-aside is later paid in full, or cancelled through restructuring under subpart S of part 1951, the set-aside will no longer exist and therefore the loan may be considered for DSA under future disasters.

(3) The term remaining on the loan receiving DSA equals or exceeds 2 years from the due date of the installment being set-aside.

(4) The amount set-aside shall be limited to the lesser of the amount the borrower is unable to pay CFSA from the production and marketing period in which the disaster occurred, or the amount the borrower is unable to pay other creditors and/or expenses rounded up to the nearest whole installment. Expenses which the borrower is unable to pay may include the following year's operating and family living expenses if the income or commodities lost from the disaster year would have been used for these purposes, or if normal income security from the disaster year is approved for release under subpart A of 7 CFR part 1962 or otherwise authorized under subpart B of 7 CFR part 1924 for these purposes. Under no circumstances will a portion of the installment be set-aside leaving a balance still due. The portion not set-aside must be paid by the borrower on or before the date exhibit A of FmHA Instruction 1951–T (available in any CFSA office) is signed.

(5) The installment that may be set-aside is limited to the first scheduled annual installment due immediately after the disaster occurred, unless that installment is paid, then the next scheduled annual installment after that may be set-aside. For borrowers affected by a 1994 disaster who already paid both of these installments, the third scheduled installment to come due after the disaster may be set-aside.

(6) The amount set-aside will be the unpaid balance remaining on the installment at the time the borrower signs exhibit A of FmHA Instruction 1951–T (available in any CFSA office.) This amount will include the unpaid interest and any principal that would be credited to the account as if the installment were paid on the due date taking into consideration any payments applied to principal and interest since the due date. Recoverable cost items charged to FO, SW, and RHF loans may be set-aside with the annual installment. Cost items identified with a loan number different from the parent loan cannot be set-aside.

§§ 1951.955–1951.956 [Reserved]

§ 1951.957 Eligibility determination and processing.

(a) *Eligibility determination.* Upon receipt of a DSA request, the County Supervisor will determine whether the borrower meets the requirements set forth in 1951.954. Approval shall be contingent upon the borrower's continuing eligibility through the signing of Exhibit A.

(1) The borrower has up to 30 days to sign exhibit A of FmHA Instruction 1951–T (available in any CFSA office), for each loan installment set-aside. The County Supervisor may provide for a longer period of time not to exceed 90 days under extenuating circumstances, including but not limited to situations where the Agency's approval is contingent upon the borrower doing something to be eligible, such as paying a portion of the FC payments from proceeds that may not be available until after the 30 day period.

(2) Pending requests for primary loan servicing will continue to be considered in accordance with subpart S of this part. However, borrowers are not eligible for servicing under both programs. The application for the program not received will automatically be withdrawn at the time the installment is set-aside or the loan restructured, whichever is applicable. The automatic withdrawal is not appealable because the borrower is no longer delinquent. If the borrower again becomes delinquent or in financial distress, or requests primary loan servicing, the borrower will be notified or the request processed in accordance with subpart S of this part.

(b) *Processing.*

(1) [Reserved.]

(2) Interest will accrue on any principal amount set-aside at the same rate charged the non-set-aside portion. Interest will not accrue on the interest portion set-aside. Limited resource interest rate changes will affect the principal set-aside.

(3) The amount set-aside, including interest accrual on any principal set-aside, will be due on or before the final due date of the loan.

(4) There are no additional security requirements attached to the DSA program. All existing security instruments will remain in effect.

(5) [Reserved.]

(6) [Reserved.]

(7) Payments applied to the amount set-aside will be applied first to interest and then principal.

(c) *Adverse determination.* If the borrower becomes more than one installment behind on any FC loan while processing the DSA request, or while an appeal is being considered, and the second installment cannot be paid current prior to exhibit A of FmHA Instruction 1951–T (available in any CFSA office) being signed, the DSA request will be denied.

§ 1951.958 Cancellation and reversal of DSA.

(a) *Reasons for cancellation.* The set-aside may be reversed and exhibit A of FmHA Instruction 1951–T cancelled under the following described situations:

(1) The loan is later restructured with primary loan servicing, (the total unpaid balance must be restructured);

(2) If prior to the first scheduled installment due date after set-aside, the servicing official determines that the current borrower, if delinquent, would qualify for a writedown or net recovery buyout in accordance with subpart S of part 1951, or operating loan assistance in accordance with § 1941.14 of subpart A of 7 CFR part 1941; or

(3) When it has been determined that the borrower was provided unauthorized DSA assistance. (The set-aside will be cancelled after all appeal rights are exhausted. The set-aside will be removed from the account and the payment terms of the original promissory note will be retained as if DSA was never granted. Borrowers financially distressed or delinquent after reversal of the set-aside will be serviced in accordance with subpart S of this part).

(b) Reserved.

§ 1951.959 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if it is determined that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority upon the request of the State Director with the recommendation of the Deputy Administrator for Farm Credit Programs, or upon request initiated by the Deputy Administrator for Farm Credit Programs.

§§ 1951.960–1951.999 [Reserved]

§ 1951.1000 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0163. Public reporting burden for this collection of information is estimated to be 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Office OIRM, Room 404–W, Washington DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0163), Washington, DC 20503.

Dated: August 31, 1995.

Eugene Moos,

Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 95–22228 Filed 9–7–95; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–10; Amendment 39–9346; AD 95–17–15]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric Company (GE) CF6–45/-50 series turbofan engines, that requires an initial and repetitive on-wing visual inspection of the side links of the five-link forward mount assembly for cracks, and replacement of the side links and pylon attachment bolts, and inspection of the fail-safe bolt and platform lug, if the side links are found cracked. This AD also requires a shop-level refurbishment of the side links as a terminating action to the on-wing inspection program. This amendment is prompted by four reports of cracked side links detected during routine engine shop visits. The actions specified by this AD are intended to prevent a side link fracture, which could result in the failure of the second side link, or the forward engine mount pylon attachment bolts, and possible separation of the engine from the aircraft.

DATES: Effective October 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 10, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7136; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–45/-50 series turbofan engines was published in the **Federal Register** on April 6, 1995 (60 FR 17487). That action proposed to require an initial and repetitive on-wing visual inspection of the side links of the five-link forward mount assembly for cracks, and replacement of the side links and pylon attachment bolts, and inspection of the fail-safe bolt and platform lug, if side links are found cracked. That proposal also would require a shop-level refurbishment of the side links as a terminating action to the on-wing inspection program. The actions would be required to be accomplished in accordance with GE Aircraft Engines CF6–50 Service Bulletin No. 72–1092, dated November 18, 1994.

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

The one commenter states that the requirement to refurbish the side link at the next engine shop visit after effective date of the AD identified in paragraph (b) should be extended so that their current maintenance program is not disrupted.

The commenter further feels that the initial and repetitive inspection program will be sufficient to meet the safety objectives of the AD, and therefore considers the refurbishment to be optional. The FAA does not concur. The FAA has determined that the refurbishment compliance schedule fairly and reasonably balances the safety need to eliminate the unsafe condition from the fleet as quickly as possible with the operators' need to avoid unscheduled maintenance actions. The initial and repetitive inspections were intended as an interim corrective action only, and in order to meet the safety objectives of the AD, the refurbishment was deemed necessary. Individual operators who believe their circumstances warrant relief from the compliance schedule may submit requests for alternative methods of compliance or adjustments to the compliance times.

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.

The FAA estimates that 220 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 7.5 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. The FAA has estimated that only a small percentage of parts will actually require replacement as a result of this AD, and therefore, has determined the parts cost to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $99,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–17–15 General Electric Company: Amendment 39–9346. Docket 95–ANE–10.

Applicability: General Electric Company (GE) CF6–45/–50 series turbofan engines installed on, but not limited to, Airbus A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series aircraft.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent a side link fracture, which could result in failure of the second side link, or the forward engine mount pylon attachment bolts, and possible separation of the engine from the aircraft, accomplish the following:

(a) Inspect left-hand side links, Part Numbers (P/N) 9204M94P01, 9204M94P03, and 9346M99P01, and right-hand side links, P/N's 9204M94P02, 9204M94P04, and 9346M99P02, that have not had the side link refurbishment done in accordance with GE CF6–50 Task Numbered Shop Manual, GEK 50481, Chapter 72–23–11, including Temporary Revision No. 72–0821 and 72–0822, both dated November 1, 1994, as follows:

(1) For side links that have not been previously inspected in accordance with GE Aircraft Engines (GEAE) CF6–50 Service Bulletin (SB) No. 72–1092, dated November 18, 1994, inspect in accordance with paragraph 2.A of GEAE CF6–50 SB No. 72–1092, dated November 18, 1994, prior to accumulating 350 cycles in service (CIS), or 750 hours time in service (TIS), after the effective date of this AD, whichever occurs earlier.

(2) For side links that have been previously inspected in accordance with GEAE CF6–50 SB No. 72–1092, dated November 18, 1994, inspect in accordance with paragraph 2.A of GEAE CF6–50 SB No. 72–1092, dated November 18, 1994, prior to accumulating 350 CIS, or 750 hours TIS since inspected in accordance with GEAE CF6–50 SB No. 72–1092, dated November 18, 1994, whichever occurs earlier.

(3) Thereafter, inspect in accordance with paragraph 2.A of GEAE CF6–50 SB No. 72–1092, dated November 18, 1994, at intervals not to exceed 350 CIS, or 750 hours TIS since the last inspection, whichever occurs earlier.

(4) If side links are found cracked, replace the cracked side links and pylon attachment bolts with serviceable parts, and inspect the fail-safe bolt and platform lug in accordance with paragraph 2.B of GEAE CF6–50 SB No. 72–1092, dated November 18, 1994, prior to further flight.

(b) Refurbish the left-hand and right-hand side links identified in paragraph (a) of this AD at the next engine shop visit after the effective date of this AD in accordance with paragraph 2.C of GEAE CF6–50 SB No. 72–1092, dated November 18, 1994. Refurbishment of side links in accordance with this paragraph constitutes terminating action to the on-wing inspection requirements of paragraph (a) of this AD.

(c) For the purpose of this AD, an engine shop visit is defined as the induction of an engine into a shop for maintenance involving the separation of the fan and core modules.

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

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

(e) The actions required by this AD shall be done in accordance with the following service bulletin:

Document No.	Pages	Date
GEAE CF6–50 SB No. 72–1092.	1–7	Nov. 18, 1994.

Total Pages: 7.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 10, 1995.

Issued in Burlington, Massachusetts, on August 15, 1995.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–20849 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 94–ANE–41; Amendment 39–9347; AD 95–17–16]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric Company (GE) CF6–80A series turbofan engines, that requires an initial and repetitive on-wing eddy current inspection or an on-wing spot fluorescent penetrant inspection of the compressor rear frame (CRF) midflange for cracks, and replacement, if necessary, with serviceable parts. This amendment also requires removal from service of certain CRF's as a terminating action to the on-wing inspection program. This amendment is prompted by a report of a CRF separation that resulted in a rejected takeoff. The actions specified by this AD are intended to prevent a CRF separation, which could result in a rejected takeoff and damage to the aircraft.

DATES: Effective November 7, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 7, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7136; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–80A series turbofan engines was published in the **Federal Register** on February 22, 1995 (60 FR 9792). That action proposed to require an initial and repetitive on-wing eddy current inspection or on- wing spot fluorescent penetrant inspection of the compressor rear frame (CRF) midflange for cracks, and replacement, if necessary, with serviceable parts. This action also proposed to require removal from service of non-modified CRF's as a terminating action to the on-wing inspection program. The actions would be required to be accomplished in accordance with GE CF6–80A Service Bulletin (SB) No. 72-593, Revision 2, dated March 19, 1992.

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

Three commenters request that the FAA move the compliance end date ahead one year to December 31, 1997. One commenter based that request on that commenter's planned acquisition of some affected engines that have not undergone the required modifications. The FAA does not concur. The commenters all recognize and accept the FAA's determination that AD action is necessary. The stated reasons for the requested extension in complying with the AD is the added cost of non-scheduled engine removals to perform the required modifications, and since the on-wing inspections have been successful in detecting cracks to date. The FAA has already considered the fleet-wide costs to operators in complying with this AD. In the normal course of that analysis, the FAA has determined that December 31, 1996, fairly and reasonably balances the safety need to eliminate this unsafe condition from the fleet as quickly as possible with operators' needs to avoid unscheduled maintenance actions. Individual operators who believe their circumstances warrant relief from this compliance schedule may submit requests for alternative methods of compliance or adjustments to the compliance times.

One commenter requests that the FAA broaden its economic analysis to include items beyond direct labor and parts costs to accomplish the required actions of the AD, such as maintenance scheduling costs. The FAA does not concur. In making a finding that an unsafe condition exists, the FAA has determined that the level of safety attained by the approved type design is no longer achieved, and the required actions are necessary to restore that level of safety. Because the type design must maintain that level of safety, necessary actions to restore that level of safety do not add additional regulatory requirements, and do not require a full cost-benefit analysis. The cost analysis is therefore limited to the direct costs of performing the required actions to restore the type design to that level of safety. When establishing compliance times, however, the FAA does try to strike a balance between the need to restore the type design to its certified level of safety with operators' need to avoid unscheduled maintenance actions.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 81 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 85 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $20,644 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,085,264.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–17–16 General Electric Company: Amendment 39–9347. Docket 94–ANE–41.

Applicability: General Electric Company (GE) CF6–80A series turbofan engines installed on, but not limited to, Airbus A310 series and Boeing 767 series aircraft.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent a compressor rear frame (CRF) separation, which could result in a rejected takeoff and damage to the aircraft, accomplish the following:

(a) Inspect CRF, Part Numbers (P/N) 9283M77G07, 9283M77G08, 9283M77G09, 9283M77G11, 9283M77G14, 7283M77G15, 9283M77G16, 9283M77G17, 9283M77G18, 9283M77G19, 1338M77G01, 1338M77G02, 1338M77G03, 1338M77G04, 1338M77G05, and 1338M77G06, that have not accomplished the midflange rework or replacement in accordance with any revision level of GE CF6–80A Service Bulletin (SB) No. 72–600 or 72–611, prior to the effective date of this AD, as follows:

(1) Perform an on-wing eddy current inspection (ECI) or an on-wing spot fluorescent penetrant inspection (FPI) of the CRF midflange for cracks in accordance with the Accomplishment Instructions and the schedule outlined in Table 1 of GE CF6–80A SB No. 72–593, Revision 2, dated March 19, 1992, or within 1,000 cycles in service since the last shop level FPI, whichever occurs later, after the effective date of this AD.

(2) Thereafter, reinspect the CRF midflange for cracks in accordance with the Accomplishment Instructions and schedule outlined in Table 2 of GE CF6–80A SB No. 72–593, Revision 2, dated March 19, 1992.

(3) Remove from service prior to further flight CRF's with cracked midflanges that exceed the on-wing serviceable limits specified in Table 2 of GE CF6–80A SB No. 72–593, Revision 2, dated March 19, 1992, and replace with a serviceable part.

(b) Remove from service CRF's identified in paragraph (a) of this AD at the next piece-part exposure, or by December 31, 1996, whichever occurs earlier, and replace with a serviceable part. Removal and replacement of CRF's in accordance with this paragraph constitutes terminating action to the on-wing inspection requirements of paragraph (a) of this AD.

(c) For the purpose of this AD, a serviceable part is defined as a CRF that has accomplished the midflange rework or replacement in accordance with any revision level of GE CF6–80A SB No. 72–600 or 72–611.

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

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

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

(f) The actions required by this AD shall be done in accordance with the following SB:

Document No.	Pages	Revision	Date
GE CF6–80A SB No. 72–593.	1–4	2	Mar. 19, 1992.
	5–8	1	Oct. 30, 1991.
	9	2	Mar. 19, 1992.
	10–12	1	Oct. 30, 1991.
	13–15	2	Mar. 19, 1992.
	16–22	1	Oct. 30, 1991.

Total Pages: 22.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 7, 1995.

Issued in Burlington, Massachusetts, on August 15, 1995.

James C. Jones,

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

[FR Doc. 95–20850 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–13–AD; Amendment 39–9351; AD 95–18–03]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With BFGoodrich Off-Wing Ramp/Slide Evacuation Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires modication of the off-wing ramp/slide evacuation systems. This amendment is prompted by reports of punctured tubes on certain BFGoodrich off-wing ramp/slide evacuation systems installed on these airplanes. The actions specified by this AD are intended to prevent such tube punctures, which could delay or impede the evacuation of passengers during an emergency.

DATES: Effective October 10, 1995.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of October 10, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207; and BFGoodrich Company, Aircraft Evacuation Systems, Sustaining Engineering, Department 7916, Phoenix, Arizona 85040. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5338; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published in the **Federal Register** on May 22, 1995 (60 FR 27054). That action proposed to require modication of the off-wing ramp/slide evacuation systems.

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 supports the proposed rule.

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.

There are approximately 992 Model BFGoodrich off-wing ramp/slide evacuation systems installed on 496 Model 767 series airplanes (2 evacuation systems per airplane) of the affected design in the worldwide fleet. The FAA estimates that 376 BFGoodrich off-wing ramp/slide evacuation systems installed on 188 Model 767 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $200 per evacuation system. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $278,240, or $740 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–18–03 Boeing: Amendment 39–9351. Docket 95–NM–13–AD.

Applicability: Model 767 series airplanes, equipped with BFGoodrich off-wing ramp/slide evacuation systems having part number (P/N) 101630, 101655, or 101656; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent tube puncture of the ramp/slide evacuation system, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 36 months after the effective date of this AD, modify the off-wing ramp/slide evacuation systems in accordance with Boeing Service Bulletin 767–25–0218, dated December 15, 1994, and BFGoodrich Service Bulletin 101630/655/656–25–269, dated October 28, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

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

(d) The modification shall be done in accordance with Boeing Service Bulletin 767–25–0218, dated December 15, 1994, and BFGoodrich Service Bulletin 101630/655/656–25–269, dated October 28, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport

Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 10, 1995.

Issued in Renton, Washington, on August 17, 1995.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–20856 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–26–AD; Amendment 39–9350; AD 95–18–02]

Airworthiness Directives; Boeing Model 757 and 767 Series Airplanes Equipped With Sundstrand Ram Air Turbine (RAT)/Hydraulic Pumps

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 and 767 series airplanes, that requires replacement of the hydraulic pressure transfer tube of the ram air turbine (RAT) system with a new hose assembly. This amendment is prompted by reports that, during flight tests, the hydraulic pressure transfer tube of the RAT cracked when the RAT was extended on a Model 767 series airplane due to overload of the hydraulic transfer tube. The actions specified by this AD are intended to prevent such overload, which could result in cracking of the hydraulic transfer tube. Such cracking subsequently could lead to the loss of hydraulic fluid of the center system and the inability of the RAT to pressurize the center system; this situation could lead to loss of all hydraulic system power in the event that power is lost in both engines.

DATES: Effective October 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 10, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kathi Ishimaru, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (206) 227–2674; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757 and 767 series airplanes was published in the **Federal Register** on May 1, 1995 (60 FR 21054). That action proposed to require replacement of the hydraulic pressure transfer tube of the ram air turbine (RAT) system with a new hose assembly.

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

One commenter supports the proposed rule.

One commenter notes that the description of the cause of the unsafe condition that appeared in the Discussion section of the preamble to the notice states that ''* * * cracking has been attributed to overload due to mishandling or improper installation of the pressure transfer tubes on the strut of the RAT system.'' The commenter states that this description is inaccurate, since the overload condition could only occur as a result of maintenance action on in-service airplanes. The commenter suggests that a more accurate description would be ''* * * cracking has been attributed to overload of the pressure transfer tube due to mishandling or improper installation during in-service RAT maintenance.'' The FAA concurs that the commenter's wording is more accurate; however, since the Discussion section is not restated in this final rule, no change to the final rule is necessary.

This commenter also provides further clarification of the unsafe condition described throughout the notice. That description states that ''cracking of the hydraulic transfer tube, if not corrected, could result in loss of hydraulic fluid * * *'' The commenter states that a more complete description of the unsafe condition would be ''* * * overload of the hydraulic transfer tube, if not corrected, may cause the tube to crack and could result in loss of hydraulic fluid * * *'' The FAA concurs and has revised all references to the unsafe condition accordingly throughout this final rule.

The same commenter further notes that the Discussion section of the preamble to the notice states that ''such overloads are likely to have occurred on other tubes * * *'' The commenter states that, since only one operator has reported cracking on two pressure transfer tubes, it does not provide a basis to conclude that overload is ''likely'' to occur on other airplanes. The commenter suggests that a more accurate description of this situation would be, ''such overloads may have occurred on other tubes * * *'' Further, the commenter states that testing has demonstrated that the RAT transfer tubes performed acceptably during an in-flight RAT deployment when shimmed in accordance with the maintenance manual. The FAA has reviewed the relevant data currently available. The FAA finds no basis to support the commenter's suggestion that the RAT transfer tubes perform acceptably when shimmed. In fact, the testing showed abnormally high stresses in the tube when the tube was shimmed in accordance with the maintenance manual. However, the FAA concurs that the commenter's suggested wording relative to the fact that overload conditions ''may have occurred'' is more accurate. Since the Discussion section is not restated in this final rule, no change to the final rule is necessary.

Additionally, this commenter points out a statement that appeared in the Discussion section of the preamble to the notice that reads, ''since an unsafe condition has been identified that is likely to exist * * *'' The commenter suggests that this phrase would be more accurate if it were changed to read, ''since an unsafe condition has been identified that may exist * * *'' The FAA does not concur. The phrasing used in that particular statement in the preamble is not accidental. Part 39.1, ''Applicability,'' of the Federal Aviation Regulations (FAR) (14 CFR 39.1) states:

''This part prescribes airworthiness directives that apply to aircraft * * * when—

(a) An unsafe condition exists in a product; and

(b) That condition is likely to exist or develop in other products of the same type design.''

Therefore, the finding that the condition ''is likely to exist or develop'' is necessary to ensure that the AD falls within the scope of part 39; its absence would arguably subject the FAA to legal challenge for inappropriately using the AD process to issue rules that do not meet the criteria for AD's. While it is understandable that a manufacturer

would like to minimize any adverse implications regarding the safety of its products, the FAA reiterates that the purpose of an AD is to correct an identified unsafe condition in aircraft, regardless of where it is or what it is caused by. In essence, the AD serves to protect the flying public from the consequences of the unsafe condition. The AD also serves to protect the manufacturer from the liability that would be faced should the unsafe condition not be corrected.

Two commenters request that the compliance time be extended from the proposed 24 months to 36 months. One of these commenters states that such an extension will allow operators to accomplish the replacement during a regularly scheduled heavy maintenance visit and will allow time for procurement of additional parts.

The FAA does not concur with the commenters' request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of accomplishing the required replacement within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. The manufacturer has advised that an ample number of required parts will be available for modification of the U.S. fleet within the proposed compliance period. Further, the FAA estimates that it would take approximately 2 work hours per airplane to accomplish the replacement; therefore, the FAA has determined that a heavy maintenance visit is not required to accomplish the replacement. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are presented to justify such an adjustment.

One commenter requests that the proposed rule be revised to cite the latest revision of Boeing Alert Service Bulletin 767–29A0077. The FAA concurs. Since the issuance of the proposed rule, the FAA has reviewed and approved Revision 1, dated June 8, 1995, of that Boeing alert service bulletin. This revised service bulletin is essentially identical to the original version; the only relevant change in Revision 1 is a revision to the effectivity listing that removes the airplane having serial number 565. The FAA has revised paragraph (a) of the final rule to reflect the latest revision to the alert service bulletin as an additional source of service information. The FAA has also revised the applicability of the final rule to remove serial number 565 from those Model 767 series airplanes that are subject to the AD.

The same commenter requests that NOTE 3 of the proposal be revised to cite the latest revision of Sundstrand Service Bulletins 730814–29–9 and 729548–29–12. The FAA concurs. The FAA has reviewed and approved Sundstrand Service Bulletin 729548–29–12, Revision 3, dated March 31, 1995; and Sundstrand Service Bulletin 730814–29–9, Revision 2, dated March 31, 1995. These revised service bulletins are essentially identical to the corresponding earlier versions, but contain certain minor editorial changes. The FAA has revised NOTE 3 of the final rule to reflect the latest revision to the service bulletins as additional sources of service information.

Since issuance of the notice, the FAA also has reviewed and approved Sundstrand Service Bulletin 729548–29–14, Revision 1, dated May 3, 1995, and Sundstrand Service Bulletin 730814–29–11, Revision 1, dated May 3, 1995. These revised service bulletins are essentially identical to the corresponding earlier versions, but contain certain minor editorial changes. The FAA has revised NOTE 2 of the final rule to reflect these latest revisions to those service bulletins as additional sources of service information.

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

There are approximately 1,215 Model 757 and 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 582 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $69,840, or $120 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–18–02 Boeing: Amendment 39–9350. Docket 95–NM–26–AD.

Applicability: Model 757 series airplanes having line positions 1 through 650 inclusive, and equipped with Sundstrand ram air turbine (RAT)/hydraulic pumps having part number (P/N) 730814 series, serial numbers 0001 through 0735 inclusive; and Model 767 series airplanes having line positions 1 through 564 inclusive, and equipped with Sundstrand RAT/hydraulic pumps having P/N 729548 series, serial numbers 0001 through 0620 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent overload of the hydraulic pressure transfer tube, which could result in cracking of the tube of the ram air turbine (RAT), and subsequently could lead to the loss of all center systems hydraulic fluid and the inability of the RAT to pressurize the center hydraulic system, accomplish the following:

(a) Within 24 months after the effective date of this AD, replace the hydraulic pressure transfer tube of the RAT system with a new hose assembly, in accordance with Boeing Alert Service Bulletin 757–29A0046, dated October 6, 1994 (for Model 757 series airplanes); or Boeing Alert Service Bulletin 767–29A0077, dated October 6, 1994, or Revision 1, dated June 8, 1995 (for Model 767 series airplanes); as applicable.

Note 2: Boeing Alert Service Bulletin 757–29A0046 references Sundstrand Service Bulletin 730814–29–11, dated November 3, 1994, or Revision 1, dated May 3, 1995; and Boeing Alert Service Bulletin 767–29A0077 references Sundstrand Service Bulletin 729548–29–14, dated November 3, 1994, or Revision 1, dated May 3, 1995; as additional sources of service information for procedures to replace the pressure tube.

Note 3: Modification of the hydraulic pressure transfer tube of the RAT system in accordance with Sundstrand Service Bulletin 730814–29–9, Revision 1, dated November 3, 1994, or Revision 2, dated March 31, 1995 (for Model 757 series airplanes); or Sundstrand Service Bulletin 729548–29–12, Revision 2, dated November 3, 1994, or Revision 3, dated March 31, 1995 (for Model 767 series airplanes); is considered acceptable for compliance with the modification requirements of paragraph (a) of this AD.

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

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

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

(d) The replacement shall be done in accordance with Boeing Alert Service Bulletin 757–29A0046, dated October 6, 1994 (for Model 757 series airplanes); or in accordance with Boeing Alert Service Bulletin 767–29A0077, dated October 6, 1994, or Boeing Alert Service Bulletin 767–29A0077, Revision 1, dated June 8, 1995 (for Model 767 series airplanes); as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 10, 1995.

Issued in Renton, Washington, on August 17, 1995.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–20857 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–31–AD; Amendment 39–9352; AD 95–18–04]

Airworthiness Directives; Beech Model 400 and 400A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400 and 400A airplanes, that requires modification of the autopilot and rudder boost interlock. This amendment is prompted by a report indicating that the rudder boost system installed on these airplanes does not operate correctly during deployment of a thrust reverser. The actions specified by this AD are intended to prevent incorrect operation of the rudder boost system during deployment of a thrust reverser and to prevent the autopilot from exceeding certain bank angle limits; these conditions could result in reduced controllability of the airplane.

DATES: Effective October 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 10, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dale Vassalli, Aerospace Engineer, Systems and Equipment Branch, ACE–130W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4132; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Beech Model 400 and 400A airplanes was published in the **Federal Register** on May 4, 1995 (60 FR 22013). That action proposed to require modification of the autopilot and rudder boost interlock.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 92 Model 400 and 400A series airplanes of the affected design in the worldwide fleet. The FAA estimates that 69 airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $99,360, or $1,440 per airplane.

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–18–04 Beech Aircraft Corporation: Amendment 39–9352. Docket 95–NM–31–AD.

Applicability: Model 400 airplanes, serial RJ–61; and Model 400A airplanes, serials RK–1 through RK–77 inclusive, and RK–79 through RK–92 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) At the next scheduled inspection, but no later than 200 hours time-in-service after the effective date of this AD, install an autopilot and rudder boost improvement kit in accordance with Beechcraft Service Bulletin No. 2533, dated October 1994.

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

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

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

(d) The installation shall be done in accordance with Beechcraft Service Bulletin No. 2533, dated October 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 10, 1995.

Issued in Renton, Washington, on August 22, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–21256 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 552

RIN 1215–AA82

Application of the Fair Labor Standards Act to Domestic Service

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule revises regulations to incorporate changes necessitated by amendments to Title II of the Social Security Act which were enacted October 22, 1994, as Public Law 103–387 (Social Security Domestic Employment Reform Act), and makes other updating and technical revisions. A separate document published elsewhere in this issue reopens the comment period regarding the proposed revision to § 552.109, which was published in the **Federal Register** on December 30, 1993 (58 FR 69310), to clarify the minimum wage and overtime exemption under the Fair Labor Standards Act (FLSA) for certain employees of third-party employers who provide domestic companionship services.

DATES: This regulation is effective October 10, 1995.

FOR FURTHER INFORMATION CONTACT: Richard M. Brennan, Acting Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room s–3506, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This regulation contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The general FLSA information collection requirements (including requirements contained in part 552) were approved by the Office of Management and Budget under the control number 1215–0017.

II. Background

The Department published a notice of proposed rulemaking in the **Federal Register** on December 30, 1993 (58 FR 69310), inviting public comments until February 28, 1994, on the following technical modifications to 29 CFR part 552:

(1) Revise § 552.100(a)(1) to delete references to former minimum wage

levels that have been overtaken by subsequent statutory increases in the minimum wage since part 552 was last revised;

(2) Revise § 552.100(c) to reflect updated credits, in a percentage format, that can be taken by an employer for meals and lodging furnished to a domestic service employee;

(3) Revise § 552.101(a)(1) to change the reference ''20 CFR 404.1027(j)'' to ''20 CFR 404.1057'' pursuant to a redesignation in regulations issued under the Social Security Act;

(4) Revise § 552.105(a) to change the FLSA reference ''section 3(s)(4)'' to ''section 3(s)(1)(B)'' in accordance with the Fair Labor Standards Amendments of 1989, 103 Stat. 938;

(5) Revise § 552.2(b) to change the reference in the third sentence from ''Section 7(1)'' to ''Section 7(l) (substituting a lower case letter ''l'' for the number ''1'' in the parentheses); and

(6) Revise the last sentence of § 552.104(b) to correct two spelling errors.

In addition, the Department invited public comments on a proposal to revise § 552.109 to clarify that, in order for the exemptions in FLSA sections 13(a)(15) and 13(b)(21) to apply, employees engaged in providing companionship services and live-in domestic service employees who are employed by a third-party employer or agency must also be ''jointly'' employed by the family or household using their services.

A total of 7 comments were received in response to the notice. All focused their remarks on the proposed revision to § 552.109 concerning joint employment and third-party employers. The Department is continuing to consider this particular proposal, and a separate document published elsewhere in this issue reopens and extends the comment period regarding the proposed revision to § 552.109.

III. Summary of Final Rule

A. Updates and Technical Revisions

No public comments were received on the updating and technical changes that were proposed in the December 1993 notice, and such revisions are adopted in the final rule as proposed.

B. Revisions Required by the ''Social Security Domestic Employment Reform Act of 1994''

The Social Security Domestic Employment Reform Act of 1994 (Pub. L. 103–387, 108 Stat. 4071) was enacted into law on October 22, 1994. Among other things, this law amended section 3121(x) of the Internal Revenue Code of 1986 to change the ''threshold'' for withholding and paying social security taxes on domestic workers from $50 per quarter to $1,000 annually in 1995. In the case of years after 1995, the applicable $1000 threshold is to be indexed in $100 increments rounded down to the nearest $100. The new law also amended section 209(a)(6) (formerly designated as 209(g)) of the Social Security Act (42 U.S.C. 409(a)(6)(B)) to exclude from the term ''wages'' cash remuneration paid by an employer for domestic service employment if the cash remuneration is less than the applicable dollar threshold as defined in section 3121(x) of the Internal Revenue Code of 1986.

As a consequence, the reference in § 552.2(b)(1) to FLSA's coverage of domestic service employees under section 6(f) of FLSA based on section 209(g) of the Social Security Act and to a $50 cash threshold must be modified to conform the regulatory language to the recent statutory changes. This revision of § 552.2(b)(1) is technical in nature and based on the Social Security Domestic Employment Reform Act of 1994 (Pub. L. 103–387, 108 Stat. 4071), about which the Department has no discretion under section 6(f) of the FLSA. Pursuant to 5 U.S.C. 553(b)(3) (A) and (B), this minor, clarifying revision does not require prior notice and comment.

Executive Order 12866/§ 202 of the Unfunded Mandates Reform Act or 1995

This final rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866, nor does it require a section 202 statement under the Unfunded Mandates Reform Act of 1995. The revisions adopted in this rule are technical in nature or are otherwise required by a recent statutory enactment of the Congress. In any event, the revisions will not have a significant impact on the employment of domestic service employees. Accordingly, these changes are not expected to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Analysis

This final rule will not have a significant economic impact on a substantial number of small entities. The changes being adopted in this rule simply conform the regulations to updates in related legislation and are technical in nature. Therefore, the rule is not expected to have a ''significant economic impact on a substantial number of small entities'' within the meaning of the Regulatory Flexibility Act. A regulatory flexibility analysis is not required.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 552

Domestic service workers, Employment, Labor, Minimum wages, Overtime pay, Wages.

Accordingly, part 552 of title 29 of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, DC, on this 31st day of August, 1995.

Maria Echaveste,

Administrator, Wage and Hour Division.

PART 552—APPLICATION OF THE FAIR LABOR STANDARDS ACT TO DOMESTIC SERVICE

1. The authority citation for part 552 is revised to read as follows:

Authority: Secs. 13(a)(15) and 13(b)(21) of the Fair Labor Standards Act, as amended (29 U.S.C. 213(a)(15), (b)(21)), 88 Stat. 62; Sec. 29(b) of the Fair Labor Standards Amendments of 1974 (Pub. L. 93–259, 88 Stat. 76), unless otherwise noted.

2. Section 552.2(b)(1) is revised to read as follows:

§ 552.2 Purpose and scope.

(a) * * *

(b) * * *

(1) If the employee's compensation for such services from his/her employer would constitute wages under section 209(a)(6) of title II of the Social Security Act, that is, if the cash remuneration during a calendar year is not less than $1,000 in 1995, or the amount designated for subsequent years pursuant to the adjustment provision in

section 3121(x) of the Internal Revenue Code of 1986; or

* * * * *

§ 552.2 [Amended]

3. In § 552.2, paragraph (b), the reference in the first sentence of the concluding text is revised to read ''Section 7(l)'' instead of ''Section 7(1)'' (substituting a lower case letter ''l'' for the number ''1'' in the parentheses).

4. In Section 552.100 (paragraphs (a)(1), (c) and (d) are revised to read as follows:

§ 552.100 Application of minimum wage and overtime provisions.

(a)(1) Domestic service employees must receive for employment in any household a minimum wage of not less than that required by section 6(a) of the Fair Labor Standards Act.

* * * * *

(c) For enforcement purposes, the Administrator will accept a credit taken by the employer of up to 37.5 percent of the statutory minimum hourly wage for a breakfast (if furnished), up to 50 percent of the statutory minimum hourly wage for a lunch (if furnished), and up to 62.5 percent of the statutory minimum hourly wage for a dinner (if furnished), which meal credits when combined do not in total exceed 150 percent of the statutory minimum hourly wage for any day. Nothing herein shall prevent employers from crediting themselves with the actual cost or fair value of furnishing meals, whichever is less, as determined in accordance with part 531 of this chapter, if such cost or fair value is different from the meal credits specified above: *Provided, however,* That employers keep, maintain and preserve (for a period of 3 years) the records on which they rely to justify such different cost figures.

(d) In the case of lodging furnished to live-in domestic service employees, the Administrator will accept a credit taken by the employer of up to seven and one-half times the statutory minimum hourly wage for each week lodging is furnished. Nothing herein shall prevent employers from crediting themselves with the actual cost or fair value of furnishing lodging, whichever is less, as determined in accordance with part 531 of this chapter, if such cost or fair value is different from the amount specified above, *provided however,* that employers keep, maintain, and preserve (for a period of 3 years) the records on which they rely to justify such different cost figures. In determining reasonable cost or fair value, the regulations and rulings in 29 CFR part 531 are applicable.

§ 552.101 [Amended]

5. In § 552.101, the parenthetical reference in the first sentence of paragraph (a) is revised to read ''(20 CFR 404.1057)''.

6. In § 552.104, paragraph (b) is revised to read as follows:

§ 552.104 Babysitting services performed on a casual basis.

* * * * *

(b) Employment in babysitting services would usually be on a ''casual basis,'' whether performed for one or more employees, if such employment by all such employers does not exceed 20 hours per week in the aggregate. Employment in excess of these hours may still be on a ''casual basis'' if the excessive hours of employment are without regularity or are for irregular or intermittent periods. Employment in babysitting services shall also be deemed to be on a ''casual basis'' (regardless of the number of weekly hours worked by the babysitter) in the case of individuals whose vocations are not domestic service who accompany families for a vacation period to take care of the children if the duration of such employment does not exceed 6 weeks.

* * * * *

§ 552.105 [Amended]

7. In § 552.105, the reference in the fourth sentence of paragraph (a) is revised to read ''section 3(s)(1)(B) of the Act * * *''

[FR Doc. 95–22141 Filed 9–7–95; 8:45 am]

BILLING CODE 4510–27–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 52–1–7109, PA 53–1–7110, PA 55–1–7111, PA 61–1–7112, PA 66–1–7113; FRL–5272–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Source-Specific VOC and NOx RACT and Synthetic Minor Permit Conditions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires reasonably available control technology (RACT) on eleven major sources and establishes permit conditions to limit one source's emissions to below major source levels. The intended effect of this action is to approve source-specific plan approvals and operating permits, which establish the above-mentioned requirements in accordance with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

DATES: This final rule is effective November 7, 1995 unless notice is received on or before October 10, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On January 6, 1995, April 24, 1995 and May 31, 1995, the Commonwealth of Pennsylvania submitted formal revisions to its State Implementation Plan (SIP). The SIP revision consists of a group of plan approvals and operating permits for individual sources of volatile organic compounds and/or nitrogen oxides located in Pennsylvania. This rulemaking addresses those plan approvals and operating permits pertaining to the following sources: (1) PECO Energy—Eddystone, (2) Gilberton Power Company, (3) Bethlehem Steel Structural Products Corp., (4) Westwood Energy Properties, Inc., (5) PECO Energy Co.—Front Street, (6) Crawford Furniture Manufacturing Corp., (7) Schuylkill Energy Resources, (8) Panther Creek Partners, (9) Columbia Gas Transmission Co.—Milford, (10) Texas Eastern Transmission Corp.—Entriken, (11) Columbia Gas Transmission Corp.—Greencastle, (12) Lord Corporation. The other plan approvals and operating permits submitted together with these being

approved today will be addressed in another rulemaking action.

Pursuant to section 182(b)(2) and 182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT for all major VOC and NOx sources by no later than May 31, 1995. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR), which is established by the CAA. The Pennsylvania portion of the Philadelphia ozone nonattainment area consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties and is classified as severe. The remaining counties in Pennsylvania are classified as either moderate or marginal nonattainment areas or are designated attainment for ozone. However, under section 184 of the CAA, at a minimum, moderate ozone nonattainment area requirements (including RACT as specified in section 182(b)(2) and 182(f)) apply throughout the OTR. Therefore, RACT is applicable statewide in Pennsylvania. The January 6, 1995, April 24, 1995 and May 31, 1995 Pennsylvania submittals that are the subject of this document are meant to satisfy the RACT requirements for eleven sources in Pennsylvania and to limit the potential VOC emissions at a source to below the major source size threshold in order to avoid RACT.

Summary of SIP Revision

The details of the RACT requirements for the source-specific plan approvals and operating permits can be found in the docket and accompanying technical support document and will not be reiterated in this document. Briefly, EPA is approving one plan approval and fourteen operating permits as RACT and one operating permit as a revision to the Pennsylvania SIP to limit a source's emissions to below the major source threshold. Several of the plan approvals and operating permits contain conditions irrelevant to the determination of VOC or NOx RACT. Consequently, these provisions are not being included in this approval for VOC or NOx RACT.

RACT

EPA is approving the plan approval (PA 23–0017) and operating permit (OP 23–0017) for PECO Energy—Eddystone, located in Delaware County. PECO Energy—Eddystone is a utility and considered a major source of NOx emissions. EPA is approving the operating permit (OP 54–0004) for Gilberton Power Company, located in Schuylkill County. Gilberton Power is a utility and considered a major source of NOx emissions. EPA is approving four operating permits (OP 48–0010, OP 48–0013, OP 48–0014, and OP 48–0015) for Bethelehem Structural Products Corporation, located in Northampton County. Bethlehem Structural Products is a steel manufacturer and considered a major source of VOC and NOx emissions. EPA is approving the operating permit (OP 54–0006) for Westwood Energy Properties, Inc., located in Schuylkill County. Westwood Energy Properties, Inc. is a utility and is considered a major source of NOx emissions. EPA is approving the operating permit (OP 46–0045) for PECO Energy Company—Front Street, located in Montgomery County. PECO Energy Company—Front Street is a utility with a natural gas combustion turbine and is considered a major source of NOx emissions. EPA is approving the operating permit (OP 16–021) for Crawford Furniture Manufacturing Corporation, located in Clarion County. Crawford Furniture Manufacturing Corp. is a wood furniture manufacturer and is considered a major source of VOC emissions. EPA is approving the operating permit (OP 54–0003) for Schuylkill Energy Resources, located in Schuylkill County. Schuylkill Energy Resources is a cogeneration plant and is considered a major source of NOx emissions. EPA is approving the operating permit (OP 13–0003) for Panther Creek Partners, located in Carbon County. Panther Creek Partners is a utility and is considered a major source of NOx emissions. EPA is approving the operating permit (OP 52–0001) for Columbia Gas Transmission Company—Milford Compressor Station, located in Pike County. Columbia Gas Transmission Co.—Milford consists of twenty-seven (27) compressor stations and is considered a major source of NOx emissions. EPA is approving the operating permit (OP 31–2003) for Texas Eastern Transmission Corporation—Entriken Compressor Station, located in Huntingdon County. Texas Eastern Transmission Corp. is a natural gas pipeline compressor station and is considered a major source of NOx emissions. EPA is approving the operating permit (OP 28–2003) for Columbia Gas Transmission Corporation—Greencastle Compressor Station, located in Franklin County. Columbia Gas Transmission Corp.—Greencastle is a compressor station and is considered a major source of NOx emissions. The specific emission limitations and other RACT requirements for these sources are summarized in the accompanying technical support document, which is available from the EPA Region III office. Several of the plan approvals/operating permits contain a provision that allows for future changes to the emission limitations based on CEM or other monitoring data. Since EPA cannot approve emission limitations that are not currently before it, any changes to the emission limitations as submitted on January 6, 1995, April 24, 1995 and May 31, 1995 to EPA must be resubmitted to and approved by EPA in order for these changes to be incorporated into the Pennsylvania SIP. Consequently, the source-specific RACT emission limitations that are being approved into the Pennsylvania SIP are those that were submitted on the above-mentioned dates and are the subject of this rule. These emission limitations will remain unless and until they are replaced pursuant to 40 CFR Part 51 and approved by the U.S. EPA.

Synthetic Minor Source Permit

EPA is approving the operating permit (OP 25–095) for Lord Corporation, located in Erie County. Lord Corporation is an aerospace surface coater and had potential VOC emissions greater than 50 TPY. The approval of these conditions will limit the emissions at this facility to less than 50 TPY and would allow Lord Corp. to avoid being considered a major VOC source, subject to the major source RACT requirements of the Clean Air Act and the Pennsylvania regulation.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document elsewhere in this **Federal Register**, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 7, 1995 unless, by October 10, 1995, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 7, 1995.

Final Action

EPA is approving the one plan approval and fourteen operating permits

as RACT and one operating permit to limit emissions at Lord Corporation to below major source levels.

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

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

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

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

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the VOC and NOx RACT approval of eleven sources and the synthetic minor permit conditions for Lord Corporation, must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: July 18, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraphs (c)(102) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(102) Revisions to the Pennsylvania Regulations Chapter 129.91 submitted on January 6, 1995, April 24, 1995 and May 31, 1995 by the Pennsylvania Department of Environmental Resources:

(i) Incorporation by reference.

(A) Four letters, two dated January 6, 1995, one dated April 24, 1995, and one dated May 31, 1995, from the Pennsylvania Department of Environmental Resources transmitting source-specific VOC and/or NOx RACT determinations in the form of plan approvals and/or operating permits for the following sources: (1) PECO Energy—Eddystone (Delaware Co.)—utility, (2) Gilberton Power Company (Schuylkill Co.)—utility, (3) Bethlehem Steel Structural Products Corp. (Northampton Co.)—steel manufacturer, (4) Westwood Energy Properties, Inc. (Schuylkill Co.)—utility, (5) PECO Energy Co.—Front Street (Montgomery Co.)—utility, (6) Crawford Furniture Manufacturing Corp. (Clarion Co.)—furniture manufacturer, (7) Schuylkill Energy Resources (Schuylkill Co.)—cogeneration plant, (8) Panther Creek Partners (Carbon Co.)—utility, (9) Columbia Gas Transmission Co.—Milford (Pike Co.), (10) Texas Eastern Transmission Corp.—Entriken (Huntingdon Co.)—Natural gas pipeline compressor station, (11) Columbia Gas Transmission Corp.—Greencastle (Franklin Co.). In addition, the operating permit for Lord Corporation (Erie Co.), aerospace surface coating operation containing provisions limiting this source as a synthetic minor source (below RACT threshold level of 50 TPY potential VOC emissions) is being approved.

(B) Plan approvals (PA), Operating permits (OP):

(*1*) PECO Energy—Eddystone—PA 23–0017, effective December 28, 1994, except the expiration date of the plan approval, and OP 23–0017, effective December 28, 1994, except the expiration date of the operating permit and conditions 6.C.(1) through (7), 6.D.(1)(c), 7.C.(1) through (5), 7.D.(1)(a) and 8.D.(1)(a) pertaining to SO_2 or PM10 requirements.

(*2*) Gilberton Power Company—OP 54–0004, effective December 20, 1994, except the expiration date of the operating permit and condition 5 pertaining to SO_2 and PM10 requirements.

(*3*) Bethlehem Structural Products Corp.—OP 48–0010, effective December 20, 1994, except the expiration date of the operating permit, OP 48–0013, effective December 20, 1994, except the expiration date of the operating permit and condition (11)(d) through (f) pertaining to sulfur and metals, OP 48–0014, effective December 20, 1994, except the expiration date of the operating permit and conditions (8) and (9) pertaining to particulate matter, and OP 48–0015, effective December 20, 1994, except the expiration date of the operating permit and conditions (9) and (10) pertaining to visible emissions and particulate matter.

(*4*) Westwood Energy Properties, Inc.—OP 54–0006, effective December 27, 1994, except the expiration date of the operating permit and the particulate and SO_2 emission limitations in condition (5).

(*5*) PECO Energy Company—Front Street—OP 46–0045, effective March 31,

1995, except the expiration date of the operating permit.

(*6*) Crawford Furniture Manufacturing Corp.—OP 16–021, effective March 27, 1995.

(*7*) Schuylkill Energy Resources—OP 54–0003, effective May 19, 1995, except the expiration date of the operating permit.

(*8*) Panther Creek Partners—OP 13–0003, effective May 19, 1995, except the expiration date of the operating permit, the non-VOC emission requirements in condition (7), and conditions (8) and (9).

(*9*) Columbia Gas Transmission Company—Milford—OP 52–0001, effective May 19, 1995, except the expiration date of the operating permit.

(*10*) Texas Eastern Transmission Corp.—OP 31–2003, effective May 16, 1995, except the expiration date of the operating permit.

(*11*) Columbia Gas Transmission Corp.—Greencastle—OP 28–2003, effective April 21, 1995, except the expiration date of the operating permit.

(*12*) Lord Corporation—OP 25–095, effective March 30, 1995.

[FR Doc. 95–22134 Filed 9–7–95; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 70

[AR–FRL–5293–1]

Clean Air Act Final Interim Approval of Operating Permits Program; the State of Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Interim Approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits program submitted by the Arkansas Department of Pollution Control and Ecology (ADPCE) for the State of Arkansas for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: October 10, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location:

U. S. Environmental Protection Agency, Region 6, Air Programs Branch (6PD–R), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72219–8913.

FOR FURTHER INFORMATION CONTACT: Wm. Nicholas Stone, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7226.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments, sections 501–507 of the Clean Air Act (''the Act''), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that States develop and submit Operating Permits programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, the EPA may grant the program interim approval for a period of up to two years. If the EPA has not fully approved a program by two years after the date of November 15, 1993, or by the end of an interim program, it must establish and implement a Federal program.

On September 19, 1994, the EPA proposed interim approval of the Operating Permits program for the State of Arkansas. See 59 FR 47828 (September 19, 1994). The EPA received public comment on the proposal and compiled a Technical Support Document which describes the Operating Permits program in greater detail. In this document, the EPA is taking final action to promulgate interim approval of the Operating Permits program for the State of Arkansas.

II. Final Action and Implications

A. Analysis of State Submission

The State of Arkansas submitted to the EPA, under a cover letter from the Governor dated October 29, 1993, the State's Operating Permits program. The submittal has adequately addressed all 16 elements required for full approval as discussed in part 70, with the exception of five interim issues listed in the proposal: (1) Reference of Prevention of Significant Deterioration (PSD) applicability for new construction and modification, (2) incorporation by reference of the part 70 provisions regarding complete application requirements and permit content requirements, (3) revision of the minor modification procedure, (4) providing a definition of the term ''prompt'', and (5) submission of a State Implementation Plan (SIP) revision for Regulation 19 consistent with Regulation 26. The State of Arkansas appropriately addressed all requirements necessary to receive interim approval of the State Operating Permits program pursuant to title V of the Act and 40 CFR part 70.

B. Response to Comments

Comments were received from three groups during the comment period that ran from September 19, 1994, until October 19, 1994. Listed below are the responses to comments received on the proposed interim approval for the Arkansas Operating Permits program.

1. Section 112(g) Implementation

Comments were made that the EPA should not allow Arkansas to implement section 112(g) until Federal rulemaking is complete. Also, objections were made to the State's use of its preconstruction permit process to implement section 112(g) requirements.

The EPA does not agree with the comment. In its proposed interim approval of Arkansas' part 70 program, the EPA proposed to approve the State's preconstruction review program for the purpose of implementing section 112(g) during the transition period before promulgation of a Federal rule implementing section 112(g). This proposal was based in part on an interpretation of the Act that would require sources to comply with section 112(g) beginning on the date of approval of the title V program, regardless of whether the EPA had completed its section 112(g) rulemaking. The EPA has since revised this interpretation of the Act in a **Federal Register** notice published on February 14, 1995, 60 FR 8333. The revised interpretation postpones the effective date of section 112(g) until after the EPA has promulgated a rule addressing that provision. The revised notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that the EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule, and that the EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until the EPA provides for such an additional postponement of section 112(g), Arkansas must be able to implement section 112(g) during the transition period between promulgation of the Federal section 112(g) rule and

adoption of implementing State regulations.

For this reason, the EPA is finalizing its approval of Arkansas' preconstruction review program. This approval clarifies that the preconstruction review program is available as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by Arkansas of rules established to implement section 112(g). However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if the EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Further, the EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

The EPA believes that, although Arkansas currently lacks a program designed specifically to implement section 112(g), the preconstruction review program will serve as an adequate implementation vehicle during a transition period because it will allow Arkansas to select control measures that would meet Maximum Achievable Control Technology, as defined in section 112, and incorporate these measures into a federally enforceable preconstruction permit.

2. Title I Modification Definition

Comments were made that the EPA has proposed interim approval of the Arkansas program because the State definition of title I modification is inconsistent with the new definition of ''title I modification'' which the EPA has proposed in the revision to 40 CFR part 70 (59 FR 44460, August 29, 1994). Comments objected to the EPA's reinterpretation of title I modification as an interim approval issue.

The EPA does not agree with the comment. As noted in the proposal for interim approval, the Arkansas Plan of Implementation for Air Pollution Control SIP at Regulation 19.2 clearly defines a modification as any increase in emissions. This definition does not provide for a threshold of emissions that could avoid New Source Review. Therefore, the threshold of emission levels at Regulation 26.10(b)(1) is inconsistent with the approved SIP definition of a modification. The Operating Permits program is consistent with part 70 by disallowing ''title I modifications'' from using the minor modification procedure at Regulation 26.10(b)(7) which includes actions under the SIP. Because the SIP is federally approved and the provision at Regulation 26.10(b)(7) is consistent with part 70, it is clear that the provision at Regulation 26.10(b)(1) is inconsistent with both the existing State law (the SIP) and with the Federal rule at 40 CFR 70.7(e)(2)(i)(A)(5). This inconsistency is discussed further under Number 3 below.

The EPA required the State to revise the Operating Permits regulation because of this inconsistency and required the State to delete Regulation 26.10(b)(1) because it was inconsistent with the federally approved definition in the State's SIP. The EPA explained its reasoning for not allowing the use of a narrower definition of ''title I modifications'' in the Washington State final approval notice (see 59 FR 55813, November 9, 1994) and incorporates that discussion here by reference.

3. Minor Modification Process

Comments were made that the EPA lacked the authority to require the State to revise its minor modification process to delete the emissions level threshold for minor modification applicability. Comments stated their belief that the ''20% of the applicable definition of major source'' constituted a de minimus emissions increase and was allowable under the minor modification rule contained in part 70.

The EPA does not agree. The Federal rule, 40 CFR 70.7(e)(3)(i), allows group processing of minor modifications that collectively meet an emission threshold of 10% of the emissions allowed by the permit for the emissions unit for which the change is requested, 20% of the applicable definition of major source, or five tons per year whichever is less, provided the minor modification criteria for individual changes at 40 CFR 70.7(e)(2)(i)(A) are also met. The criteria at 40 CFR 70.7(e)(2)(i)(A)(5) and Regulation 26.10(b)(7) disallow changes that are title I modifications. As discussed under Number 2 above, the SIP at Regulation 19.2 defines ''modification'' as any increase in emissions. Because Regulation 26.10(b)(1) allows certain emissions increases to be processed under the minor modification procedure, the EPA considers the minor modification process in Regulation 26 to be inconsistent with itself and the Federal part 70 rule.

The EPA is currently revising part 70 to clarify the definition of ''title I modification'' (see 59 FR 44460, August 29, 1994). After this revision, the provision at Regulation 26.10(b)(1) might be interpreted as a de minimis threshold. As the promulgated Federal rule exists and the federally approved SIP exist, any increase in emissions would not be allowed under the minor modification procedure. The title I modification issue is discussed in detail in Number 2 above. The State's regulations must be consistent with the Federal rule as currently promulgated. Therefore, the EPA maintains that the State's regulations are inconsistent with the Federal rule because an emissions increase is allowed for individual changes under Regulation 26.10(b)(1) while the State's regulations at Regulation 26.10(b)(7) and the Federal rule at 40 CFR 70.7(e)(2)(i)(A)(5) disallow emissions increases.

4. Incorporation by Reference of PSD Requirements

Comment was made that the State should not have to formally incorporate by reference the PSD requirements into Regulation 26 as stated in the proposal for this action.

The EPA concurs with this comment. The proposal recommended incorporation of the PSD requirements in order to clarify the regulation for major sources. The State can effectively meet this requirement by amending the regulations at 26.3(b) with:

(4) Any source subject to § 19.9 of the *Compilation of Regulations of the Arkansas State Implementation Plan for Air Pollution Control.*

5. PSD Applicability for Constructed/Modified Sources

Comment was made that the EPA should require Arkansas to revise its operating permit regulation so that the operating permit need only be revised before a change is placed in operation, rather than before construction begins.

The EPA does not agree with this comment. The State of Arkansas has clearly demonstrated that major sources will be regulated by Regulation 26. These sources are required to obtain a modification to the operating permit that incorporates the applicable requirements reflected in the SIP (Regulation 19) before construction begins. This procedure allows the facility to obtain a pre-construction permit as well as a modification to the operating permit. Also, this process allows for adequate public comment without duplicating the public notice process.

If the State chose to revise the regulation as the comment suggests, the facility would still have to obtain a pre-construction permit under Regulation 19 before construction. This includes the requirement of full public review for significant modifications. Then, the

facility would have to obtain a significant modification for the operating permit under Regulation 26 before operating the modified unit.

6. Deviation Reporting

All three comments objected to the EPA requirement that the State define ''prompt'' in the regulations with respect to deviations.

The EPA concurs with these comments. The notice for proposed approval reflected the most prudent position the EPA could take that would offer clear guidance to the regulated community while protecting the environment. Since publication of the notice, the EPA has reconsidered this position and agrees with the comments that the term ''prompt'' may be defined in the permit.

The EPA maintains that ''prompt'' should be defined as two to ten days after a deviation. This timeframe is sufficient in most cases to protect public health and safety as well as provide a forewarning of potential problems. The regulating authority should give consideration to shorter timeframes where potential health and safety concerns exist. Where ''prompt'' is defined in the individual permit but not in the program regulations, the EPA may veto permits that do not require sufficiently prompt reporting of deviations.

7. Variance Provisions

Comments objected to the EPA's position that variance provisions under State statute do not apply to title V permits unless title V processes are followed.

The EPA does not agree with these comments. As discussed in the proposed notice, the EPA recognizes the State's statutory authority to grant variances. However, 40 CFR part 70 does not allow States to grant variances from title V requirements. The EPA recognizes that title V permits may include compliance schedules for sources which are out of compliance with applicable requirements. However, such measures to bring a source into compliance are not the same as variances, which normally provide a complete exemption from a requirement for the duration of the variance. The EPA also recognizes that Arkansas may exercise enforcement discretion when addressing permit violations, but such discretion is not unlimited.

8. Incorporation by Reference of Application and Permit Content

Comment was made that the State should not have to formally incorporate by reference the application and permit content requirements from 40 CFR 70.5(c) and 70.6(a–c) into Regulation 26 as stated in the proposal.

The EPA does not agree with this comment. Though it may appear clear that the application content and permit content are fully incorporated into the State regulations, formal incorporation by reference will provide a date of promulgation to the incorporated provisions. Changes to the State's program are certain as the Clean Air Act Amendments are implemented, and in this way the State regulations are made clear for enforcement and implementation purposes.

C. Final Action

The EPA is promulgating interim approval of the operating permits program submitted by the State of Arkansas on November 9, 1994. The State must make the following changes to receive full approval:

1. Incorporation by Reference

The State must amend Regulation 26.4 and 26.7 to incorporate the date of promulgation of the rule at 40 CFR part 70 as referenced in the regulation. By incorporating the promulgation date of July 21, 1992, the State regulations will be made clear.

2. Minor Modification Procedures

The language in the State's Regulation 26.10(b)(1) regarding emission levels must be deleted to make the regulations consistent with the Federal rule at 40 CFR 70.7(e)(2)(i)(A) and the State's Regulations 26.10(b)(7) and 19.2.

3. Submission of Regulation 19

The State of Arkansas must ensure consistency between the operating permits program (Regulation 26) and the SIP (Regulation 19). The State is working on a revision to Regulation 19.4 to make the SIP consistent with Regulation 26. A SIP revision must be submitted that is consistent with the rule at 40 CFR part 70 during the interim approval period.

Arkansas' part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within the State of Arkansas, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.,* 59 FR 55813, 55815–55818 (November 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the Clean Air Act; *see also* 59 FR 43956, 43962 (August 25, 1994); 58 FR 54364 (October 21, 1993).

This interim approval, which may not be renewed, extends until October 8, 1997. During this interim approval period, the State of Arkansas is protected from sanctions, and the EPA is not obligated to promulgate, administer and enforce a Federal Operating Permits program in the State of Arkansas. Permits issued under a program with interim approval have full standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the three year time period for processing the initial permit applications.

If Arkansas fails to submit a complete corrective program for full approval by April 8, 1997, the EPA will start an 18 month clock for mandatory sanctions. If Arkansas then fails to submit a corrective program that the EPA finds complete before the expiration of that 18 month period, the EPA will apply sanctions as required by section 502(d)(2) of the Act, which will remain in effect until the EPA determines that the State of Arkansas has corrected the deficiency by submitting a complete corrective program.

If the EPA disapproves Arkansas' complete corrective program, the EPA will apply sanctions as required by section 502(d)(2) on the date 18 months after the effective date of the disapproval, unless prior to that date Arkansas has submitted a revised program and the EPA has determined that it corrected the deficiencies that prompted the disapproval.

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

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by the EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities,

adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

III. Administrative Requirements

Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including the eight public comments received and reviewed by the EPA on the proposal, are contained in docket number OPP–2–9–1 maintained at the EPA Regional Office. The docket is an organized and complete file of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

List of Subjects in 40 CFR Part 70

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

Dated: August 25, 1995.

A. Stanley Meiburg,

Acting Regional Administrator (6RA).

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

PART 70—[AMENDED]

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

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

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

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

* * * * *

Arkansas

(a) The ADPCE submitted its Operating Permits program on November 9, 1993, for approval. Interim approval is effective on October 10, 1995. Interim approval will expire October 8, 1997.

(b) (Reserved)

* * * * *

[FR Doc. 95–22086 Filed 9–7–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 090195A]

Pacific Halibut Fisheries; Inseason Actions Off California, Oregon, and Washington

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

ACTION: Inseason actions.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes these inseason actions pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. These actions are intended to enhance the conservation of the Pacific halibut stock.

EFFECTIVE DATES: Area 2A non-treaty commercial fishery reopening 8 a.m. through 6 p.m., local time, August 29, 1995; north Washington coast sport fishery reopening 8 a.m., local time, September 3, 1995, through 6 p.m., local time, September 4, 1995; Columbia River Area closure 6 p.m., local time, September 30, 1995, through December 31, 1995; California coastal waters closure 6 p.m., September 30, 1995 through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907–586–7221; William W. Stelle, Jr., 206–526–6140; or Donald McCaughran, 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued these inseason actions pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, these inseason actions are published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason actions of the restrictions and requirements established therein.

Inseason Actions

1995 Halibut Landing Report Number 13

Area 2A Non-Treaty Commercial Fishery to Reopen

The August 15 fishing period in Area 2A resulted in a catch of 25,000 lb (11.3 metric tons (mt)). The revised total commercial catch from Area 2A to date is 73,000 lb (33.11 mt), leaving approximately 32,000 lb (14.51 mt) to be taken.

Area 2A will reopen on August 29 for 10 hours from 8 a.m. to 6 p.m. local time. The fishery is restricted to waters that are south of Point Chehalis, WA (46°53′18″ N. lat.) under regulations promulgated by NMFS. Fishing period limits as indicated in the following table will be in effect for this opening.

Vessel class		Fishing period limit (lb)	
Length	Letter	Dressed, head-on	Dressed, head-off*
0–25	A	225	200
26–30	B	240	210
31–35	C	380	335
36–40	D	1,050	925
41–45	E	1,130	995
46–50	F	1,350	1,190
51–55	G	1,510	1,330
56+	H	2,275	2,000

*Weights are after 2 percent has been deducted for ice and slime if fish are not washed prior to weighing.

The appropriate vessel length class and letter is printed on each halibut license.

The fishing period limit is shown in terms of dressed, head-off weight as well as dressed, head-on weight, although fishermen are reminded that regulations require that all halibut from Area 2A be landed with the head on.

The fishing period limit applies to the vessel, not the individual fisherman, and any landings over the vessel limit will be subject to forfeiture and fine.

North Washington Coast Sport Fishery to Reopen

The North Washington Coast (waters west of the Bonilla-Tatoosh line and south to the Queets River) sport halibut fishery will reopen for 2 days, September 3 and 4, 1995. Approximately 7,000 lb (3.17 mt) of the 71,410 lb (32.20 mt) quota remain to be harvested. Catch and effort during previous openings on July 1 and July 29 were low, allowing an additional opening. The daily bag limit will be one halibut per person, with no size limit. All other published sport fishery regulations, including the closed area southwest of Cape Flattery, will be in effect.

Columbia River Area

This area (Leadbetter Point to Cape Falcon) remains open 7 days a week with a one fish daily bag limit and a minimum size limit of 32 inches (12.59 centimeters (cm)). Approximately 1,200 lb (.54 mt) of a 4,617 lb (2.09 mt) catch limit has been harvested. All reported landings have occurred in WA. This fishery will close September 30, 1995, or when the catch limit is reached, whichever occurs earlier.

California Coastal Waters

Coastal waters from the Oregon-California border remain open 7 days per week with a daily bag limit of one halibut and a minimum size limit of 32 inches (12.59 cm). This area will close for the year on September 30, 1995.

Dated: September 1, 1995.

Richard H. Schaefer,

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

[FR Doc. 95–22278 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–22–W

50 CFR Part 630

[Docket No. 950522139–5219–02; I.D. 042495B]

RIN 0648–AH75

Atlantic Swordfish Fishery; Quotas and Closure of Directed Fishery

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

ACTION: Interim and final rule; Annual quotas and closure; request for comments.

SUMMARY: By final rule, NMFS amends the regulations governing the Atlantic swordfish fishery by: 1) Reducing the total allowable catch (TAC) to 2,984 metric tons (mt); 2) increasing the swordfish bycatch limit to 15 fish for longline vessels when the directed longline swordfish fishery is closed; 3) providing authority for NMFS to modify the bycatch limit; 4) increasing the minimum notice of a closure to 14 days; and 5) reducing the minimum days allowed for the public comment on proposed quota adjustments to 30 days. By interim rule, NMFS amends the regulations to establish a 1996 trip limit of 31,600 pounds (lb) (14,334 kg) dressed weight of swordfish. The intent of this action is to protect the swordfish resource while allowing harvests of swordfish consistent with the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and to provide authority to NMFS to make adjustments to the trip limits. NMFS also announces a closure of the directed swordfish fishery for longliners.

DATES: Effective September 8, 1995. The closure for the directed longline fishery for swordfish is effective from 12 noon on October 31, 1995 through 11:59 p.m. December 31, 1995.

Comments on the 1996 trip limits must be submitted by November 1, 1995, and will be considered in establishing final trip limits.

ADDRESSES: Copies of an Environmental Assessment/Regulatory Impact Review (EA/RIR) supporting this action may be obtained from Richard B. Stone, Chief, Highly Migratory Species Management Division, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Comments on the interim rule for trip limits should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Ronald G. Rinaldo or Rebecca Lent, 301–713–2347, fax 301–713–0596.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

Background information about the need for revisions to the regulations governing the Atlantic swordfish fishery was provided in the notice of proposed rulemaking (60 FR 29543, June 5, 1995) and is not repeated here.

These regulatory changes will improve NMFS' ability to implement the ICCAT recommendations and further the management objectives for the Atlantic swordfish fishery. NMFS has re-evaluated the annual TAC, the annual directed-fishery quota, the annual bycatch quota, bycatch limits in the non-directed fishery, and the harpoon gear set-aside quotas in the Atlantic swordfish fishery in accordance with the procedures and factors specified in 50 CFR 630.24(d), including consideration of the latest stock assessment and recommendations of ICCAT. The final regulations are summarized as follows:

1. Total Allowable Catch (TAC)

NMFS is decreasing the annual TAC by 449 mt to 2,984 mt. All weights are in dressed weight of swordfish, unless indicated otherwise. The TAC is divided between a directed-fishery quota of 2,730 mt and a bycatch quota of 254 mt. The directed-fishery quota is divided into two 1,365 mt semiannual quotas for each of the 6-month periods, January 1 through June 30, and July 1 through December 31. Each of the 1,365 mt semiannual quotas is further subdivided into a drift gillnet quota of

27 mt and a longline and harpoon quota of 1,338 mt. This allocation by gear types employs the same percentages that were in effect in 1994.

NMFS estimates that approximately 113 mt of swordfish semiannually will be discarded dead, based on estimates from 1992 and 1993, recent estimated rates of discards, and expected improvement by the fleet in avoiding small fish. Therefore, the semiannual landing quota for the longline and harpoon swordfish fishery is the semiannual catch quota of 1,338 mt minus the estimated semiannual dead discards of 113 mt, or 1,225 mt for each of the two semiannual periods.

Following a closure of the directed longline fishery, any overharvest or underharvest will be added or subtracted, respectively, to the bycatch reserve of 254 mt. The ability to add or subtract underage or overage ensures that the United States will abide by ICCAT quotas while meeting the requirement under ATCA to provide U.S. fishermen with a reasonable opportunity to harvest their full quota.

NMFS has no new information sufficient to justify changes in the existing 10 mt special set-aside quota for harpoon gear.

2. Swordfish Bycatch in the Non-Directed Fishery

There are no new data or analyses that indicate a need for revision to the existing bycatch limits of five swordfish per trip in the squid trawl fishery and two swordfish per trip for all other bycatch fisheries, except the non-directed season in the longline fleet for 1995. Data analyzed by NMFS on longline vessels not directing at swordfish indicate that an increased bycatch limit of 15 swordfish per vessel trip would minimize the discards for 75 percent of the trips in 6 of the 7 fishing areas analyzed, without exceeding the bycatch reserve. Therefore, a bycatch limit of 15 fish per trip is established for longline vessels during the non-directed fishing season. This bycatch limit is based, in part, on the estimated period of time during which the directed fishery will be closed. The rule authorizes the Assistant Administrator for Fisheries, NOAA (AA) to modify the bycatch limits based upon the estimated period of time that the directed fishery is closed as well as the swordfish bycatch in the non-directed fishery.

3. Trip Limits

The reduced TAC and additional fishing capacity in the 1996 swordfish fishery will likely result in early closure of the directed fishery, resulting in economic disruption and hardship to the fleet. NMFS solicited comments on measures to extend the fishing season, including possible trip limits. The interim rule imposes a trip limit for swordfish for permitted longline commercial fishing vessels, and authorizes the AA to make adjustments in the management measures in order to achieve Atlantic swordfish management objectives. These adjustments may include changes in commercial trip limits. Under the interim trip limit, permitted longline vessels may harvest and possess up to 31,600 lb (14,334 kg) of swordfish per trip in 1996. This trip limit is based on the maximum catch of 90 percent of the trips in the Grand Banks (distant-water) fishing trips in 1992 and 1993. Trip limits are not defined by vessel type due to the difficulty of classifying distant-water versus coastal-water vessels. NMFS is soliciting further comments and suggestions from industry on how to clearly classify and monitor trip limits by vessel type and/or area fished.

Implementation of this trip limit for permitted vessels is intended to lower total daily landings, extend the open season, reduce the possibility that the semiannual quota will be exceeded, and reduce the waste, economic disruption and safety problems associated with a derby-style fishery.

4. Other

This rule reduces the minimum number of days allowed for public comment on proposed adjustments to the annual quota from 45 to 30. This reduction is intended to help expedite the rulemaking process for the swordfish fishery, particularly given the relatively brief period between the ICCAT recommendations and the commencement of the fishing season. NMFS also requests comments on whether the fishing year should be changed from January through December to July through June. Such a change would allow NMFS to implement ICCAT recommendations prior to the start of the fishing year.

This rule also changes the address of the Director, NMFS Southeast Region, whose office has moved.

Finally, this rule increases the minimum notice required for a closure from 8 days to 14 days, due to the difficulty for distant water vessels to return to port and offload within 8 days. Thus, a vessel will have a minimum of 14 days to return to port and offload.

Comments and Responses

1. ICCAT Quota Recommendations

Comment: Many fishery participants stated their concern over the country swordfish quotas set by ICCAT for 1995 and 1996. Some commenters suggested that the total quota was set too high to allow for stock recovery, while others indicated that the 1996 U.S. quota should be renegotiated, so that countries that did not comply with previous ICCAT recommendations would be penalized. The 1994 underage should be added to the 1995 quota.

Response: NMFS agrees that the total swordfish quota for the North Atlantic may not ensure stock recovery. The swordfish stock assessment will be reviewed at the 1995 meeting of the Scientific and Statistical Committee of ICCAT. Pending this review, NMFS is obligated under ATCA to implement the ICCAT-recommended quotas. The issue of renegotiating the U.S. quota at ICCAT is beyond the scope of this rulemaking. NMFS agrees that overage/underage is a useful concept that should be discussed at the 1995 ICCAT meeting for future implementation.

2. June-July Application of Total Allowable Catch (TAC)

Comment: Some commenters suggested that quotas be applied on a July-June basis rather than calendar-year basis.

Response: The United States will discuss this issue at ICCAT and NMFS is seeking additional comment from the public on this issue.

3. Measures to Extend the Fishing Season

Comment: NMFS solicited and received numerous suggestions regarding methods to extend the fishing season. Several suggestions were made for extending the fishing season, given the reduced TAC for 1995 and 1996 and the increased fishing capacity due to the return of highliners that had left the Atlantic over the past 4 years to operate in the Pacific. These suggestions included trip limits, seasonal closure of the directed fishery, and establishment of set-aside quotas; the bulk of these were to be applied by vessel size, operation (distant-water versus coastal-water), or by region. There was considerable concern that the landings of larger, distant-water vessels would result in a closure of the fishery, with detrimental effects on smaller operators that provide year-round fresh and high-quality fish. Others were concerned that whatever is done be done equitably and not to the detriment of the distant water fleet or fishermen in northern areas. Some commenters suggested that NMFS classify the vessels according to individual fishing records.

Response: NMFS agrees that the reduced TAC and the additional fishing

capacity will result in early closure of the directed fishery, resulting in economic disruption and hardship to the fleet. The interim rule establishes a limit of 31,600 lb (14,334 kg) of swordfish per trip for 1996 for all vessels in all regions. The difficulty of classifying distant-water vs. coastal-water vessels and of enforcing different trip limits for them requires the establishment of one trip limit at this time. There is insufficient analysis to enable classification based on an individual vessel's past performance. The trip limit is based on 90 percent of the trips taken in the Grand Banks (distant-water) fishery in 1992 and 1993. The trip limit should extend the season while affecting only the larger, distant-water vessels, rather than the smaller, inshore boats that take shorter trips. NMFS will continue to analyze appropriate trip limits for smaller vessels and vessels in other geographical regions to determine equitable limits for all vessels. NMFS will consider comments and suggestions from the industry, particularly with regards to methods for clearly distinguishing distant-water versus smaller, inshore vessels, in promulgating final trip limits for 1996.

4. Swordfish Bycatch in the Non-directed Fishery

Comment: NMFS solicited and received numerous comments on revisions of the longline bycatch limit during closure of the directed longline fishery. Commenters indicated that the catch limit during closure of the directed swordfish fishery should be reviewed in order to minimize the waste from dead discards and to minimize the economic disruption and hardship caused by the closure of the directed fishery.

Response: NMFS agrees that the bycatch limit warrants revision given the high probability of a closure under a reduced TAC and increased fishing capacity. The final rule establishes a bycatch limit for longliners of 15 swordfish per trip during the non-directed fishing season. This limit is based on analysis of catch data for longline vessels not targeting swordfish. Bycatch by other gear types remains at the current levels.

5. Undersized Swordfish Discards

Comment: There were numerous comments regarding dead discards of undersized swordfish. Some commenters indicated that it may be possible to reduce undersized bycatch through area and season closures, and possibly gear modifications, including the use of size-selective gear-types such as harpoons. Comments were made regarding the Second Harvest Program; some feel the program should be implemented while others are concerned about the possible problems due to lack of observers and tax-saving incentives.

Response: NMFS continues to support research and analysis that would provide information on how to reduce the catch of undersized swordfish. This reduction is increasingly critical given the reduced TAC and increased fishing capacity. NMFS believes that this issue should be addressed at ICCAT and will raise the issue at the ICCAT Advisory Committee meeting. Regarding Second Harvest, NMFS is proceeding with this program under strict observation and enforcement requirements.

6. Limited Access for the Atlantic Swordfish Fishery

Comment: Many commenters reiterated the long-standing request on the part of some industry participants to implement limited access in the swordfish fishery and feel that NMFS should implement limited access for the Atlantic swordfish fishery as soon as possible. Some firms may go out of business unless limited access is implemented by 1996.

Response: NMFS has published an Advance Notice of Proposed Rulemaking announcing the availability of discussion papers on limited access options for the Atlantic swordfish and shark fisheries, as well as a concept paper on rationalization of fisheries for Atlantic highly migratory species. These discussion papers will serve as the basis for proposed rulemaking on limited access in these fisheries in the fall of 1995.

7. Procedures for Fishery Closures

Comment: Numerous comments were offered on the optimal method for announcing and implementing a closure of the directed fishery. Announcement of a closure should be made at least 14 days in advance, and provide an additional 14-day period for offloading the catch.

Response: NMFS agrees that adequate closure notification is necessary to prevent market gluts as well as safety problems with closure announcements. This rule increases the minimum notice of a closure from 8 to 14 days. Thus, once NMFS issues a closure notice, a vessel will have a minimum of 14 days to return to port and offload. At this time, NMFS is not providing an additional 14 days to offload because of enforcement concerns that need further analysis.

Changes from the Proposed Rule

In accordance with a review of the factors specified in 50 CFR 630.24(d), consideration of the comments received, and further analysis of available data, the following changes were made to the proposed rule:

1. Swordfish Bycatch in the Non-directed Fishery

The final rule establishes a bycatch limit of 15 fish per trip for longline vessels during the non-directed fishing season.

2. Trip Limits

The interim rule allows all permitted vessels to harvest and possess up to and including 31,600 lb (14,334 kg) of swordfish per trip in 1996.

3. Other

The final rule changes the minimum number of days allowed for public comment for proposed adjustments to annual quotas from 45 to 30, and the minimum notification of a closure from 8 days to 14 days.

Closure of the Directed Fishery

The regulations governing the Atlantic swordfish fisheries at 50 CFR 630.25 provide for a specified annual quota (modified to 2,450 mt dressed weight in this final rule, including estimated dead discards) to be harvested by the directed longline fishery. NMFS is required, under § 630.25(a)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of will equal the quota, and to publish a **Federal Register** document announcing the closure. The current projected date on which the directed Atlantic swordfish catch by the longline fleet is estimated to reach or exceed the quota is October 31, 1995.

Therefore, NMFS announces that the directed longline fishery for swordfish is closed at 12 noon on October 31, 1995. During the closure of the directed longline fishery, aboard a vessel using or having on board a longline and not having on board harpoon gear, a person may not fish for swordfish from the North Atlantic stock, and no more than 15 swordfish per trip may be possessed or landed. Beginning at 12:01 p.m., October 31, 1995, a non-directed longline fleet fishing season will be in effect through 11:59 p.m. December 31, 1995. The AA may modify or close the non-directed longline fleet fishing season upon publication of notification in the **Federal Register**.

Classification

This final rule is published under the authority of ATCA. The AA has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic swordfish fishery. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that, if adopted, this rule would not have a significant economic impact on a substantial number of small entities. That certification remains valid. While the 1995 TAC represents about a 13–percent reduction from the TAC of the previous 2 years, the allowable catch is slightly higher than last year's catch; as a result, a regulatory flexibility analysis was not prepared. The RIR provides further discussion of the economic effects of the final rule.

This action is exempt from review under E.O. 12866.

NMFS issued a biological opinion under the Endangered Species Act (ESA) on September 1, 1995, indicating that the level of impact and marine mammal takes from the longline and harpoon swordfish fishery is not likely to jeopardize the continued existence of any sea turtle species or any marine mammal populations. Prior to the beginning of the 1996 drift gillnet fishery, NMFS will conduct a formal consultation on the fishery under the ESA. Based on the results of the consultation, NMFS may then conduct a rulemaking to promulgate any protective measures prior to the beginning of the drift gillnet fishing season. Since there is no gillnet fishery for the remainder of 1995, no ESA consultation on the drift gillnet fishery is necessary at this time.

The AA has determined that there is good cause to waive partially the 30-day delay in effective date normally required by 5 U.S.C. 553(d), because implementing the U.S. ICCAT-recommended quota for 1995 is necessary for achieving management objectives and meeting ICCAT treaty obligations. The effective date is 7 days from the date of filing with the Office of the Federal Register.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: September 1, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

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

PART 630—ATLANTIC SWORDFISH FISHERY

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

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

2. In § 630.2, the definition for ''Regional Director'' is revised, and the definition for ''Trip limit'' is added, in alphabetical order, to read as follows:

§ 630.2 Definitions.

* * * * *

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; telephone 813–570–5301, or a designee.

* * * * *

Trip limit means the total allowable take from a single trip as defined in this section.

* * * * *

3. In § 630.7, paragraph (z) is added to read as follows:

§ 630.7 Prohibitions.

* * * * *

(z) Exceed the vessel trip limits specified in § 630.23.

4. In § 630.23, paragraph (d) is added to read as follows:

§ 630.23 Harvest limitations.

* * * * *

(d) *Vessel trip limits.* In 1996, vessels issued a swordfish permit under § 630.4 may not land from, or possess during, a single trip more than 31,600 lb (14,334 kg) dressed weight of swordfish, unless a closure has been effected under § 630.25.

5. In § 630.24, paragraph (b)(1), the first sentence of paragraph (d)(6), and paragraph (f) are revised to read as follows:

§ 630.24 Quotas.

* * * * *

(b) * * *

(1) The annual quota for the directed fishery for swordfish is 2,730 mt, dressed weight, divided into two semiannual quotas as follows:

(i) For the semiannual period January 1 through June 30:

(A) 27 mt dressed weight, that may be harvested by drift gillnet; and

(B) 1,338 mt, dressed weight, that may be harvested by longline and harpoon. To account for harvested fish that are discarded dead, only 1,225 mt, dressed weight, may be landed in this category.

(ii) For the semiannual period July 1 through December 31:

(A) 27 mt, dressed weight, that may be harvested by drift gillnet; and

(B) 1,338 mt, dressed weight, that may be harvested by longline and harpoon. To account for harvested fish that are discarded dead, only 1,225 mt, dressed weight, may be landed in this category.

* * * * *

(d) * * *

(6) NMFS will announce any adjustments to the annual quotas by publication of a proposed rule in the **Federal Register**, providing for a minimum of a 30-day comment period. * * *

* * * * *

(f) *Inseason adjustments to the bycatch and directed fishery quotas.* (1) If NMFS determines that the annual bycatch quota will not be taken before the end of the fishing year, the excess quota may be allocated to the directed-fishery quotas pursuant to the requirements and procedures in paragraphs (g) and (h) of this section.

(2) If NMFS determines that it is necessary to close the directed fishery, any estimated overharvest or underharvest directed-fishery quota available immediately prior to that closure will be applied to the annual bycatch quota and will be used to adjust the annual bycatch quota accordingly.

* * * * *

7. In § 630.25, the second sentences of paragraphs (a)(1) and (a)(2), and paragraph (c)(2)(ii) are revised to read as follows:

§ 630.25 Closures and bycatch limits.

(a) * * * (1) * * * The effective date of such notice will be at least 14 days after the date such notice is filed at the Office of the Federal Register. * * *

(2) * * * The effective date of such notice will be at least 14 days after the date such notice is filed at the Office of the Federal Register. * * *

* * * * *

(c) * * *

(2) * * *

(ii) No more than 15 swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat., or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state. The Assistant Administrator may modify or change the bycatch limits upon publication of notice in the **Federal Register** pursuant to the requirements and procedures in paragraphs (a)(1) and (a)(2) of this section. Changes in the

bycatch limits will be based upon the length of the directed fishery closure as well as the estimated catch per vessel in the non-directed fishery.

* * * * *

[FR Doc. 95–22238 Filed 9–1–95; 4:39 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 174
Friday, September 8, 1995

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

RIN 3206–AE80

Employment (General); Use of Private Sector Temporaries

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) proposes to authorize Federal agencies to use private sector temporaries for 120 work days instead of 120 calendar days as currently permitted. Agencies would continue to purchase temporary help services through the Federal procurement process following all applicable laws and regulations relating to the purchase of goods or services from the private sector. The proposed change would give agencies more flexibility to conduct their operations, as recommended by the National Performance Review.

DATES: Comments must be received on or before November 7, 1995.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Employment, U.S. Office of Personnel Management, 1900 E Street NW., Room 6F08, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Ellen Russell on 202–606–0830, FAX 202–606–2329, or TDD 202–606–0023.

SUPPLEMENTARY INFORMATION: On January 25, 1989, OPM published [at 54 FR 3762] regulations authorizing Federal agencies to use commercial temporary help services in two situations: certain employee absences and critical unexpected workload needs. Because the authority was new and there were concerns about the possibility of misuse, the timeframes were deliberately tight. Moreover, the regulations contained two sets of time limits: a 45-work day limit on using a particular individual from a temporary help service firm and an overall 120-calendar-day limit on using temporary help services for any one situation. When justified, OPM approved agency requests for extensions.

Our review indicates that in the more than 6 years the authority has been in effect, Federal agencies have appropriately used the services of temporary help firms. Agencies indicated that their employees favor the policy because using temporary help services alleviates extra work pressure and stress during workload peaks and also makes it easier for employees to get time off for critical personal needs. Agencies recommended continuing the authority for temporary help service firms without the 45-day restriction on the use of same individual from a firm because it was inefficient to retrain a new person after 45 days.

Although this proposal would permit agencies to use temporary help services for longer periods, there is no change in the Office of Personnel Management view that continuing work is most appropriately performed by permanent Federal employees. On September 13, 1994, OPM published final regulations [at 59 FR 46895] to ensure that temporary Federal appointments are used to meet truly short-term needs. As in those regulations, the limits in this proposal are designed to restrict the use of temporary help services to short-term needs.

In exercising the discretion to use temporary help services, agencies are reminded of their labor relations obligations under Chapter 71 of Title 5 of the U.S. Code and Executive Order 12871.

This proposal would lengthen the time agencies could use temporary help services for an individual situation from 120 calendar days to 120 workdays. The new 120-workday limit would also apply to an agency's use of a particular individual from a firm; a change from the current 45-workday limit in a 6-month period. The proposal would continue the provision for agencies to request an extension from local OPM service centers when the need for temporary help services continued beyond the initial 120 workdays and would specify that OPM could approve an extension for up to a total of 240 workdays. This would mean that an agency with OPM approval could use the same individual from a firm for up to 240 workdays on the same assignment or on a different assignment. In this context, ''agency'' means a major organizational element, headquarters or field, of an agency.

The proposal continues the current prohibitions against using temporary help services to displace Federal employees or in place of regular civil service procedures for permanent appointment and would add a prohibition against use of temporary help services to circumvent controls on employment levels. The proposal also continues current provisions permitting the use of temporary help services only when there are no current agency employees who could be spared to do the work, there are no former employees available on the agency's reemployment priority list, and when there are no applicants available for temporary Federal employment within the timeframe needed.

The proposal would change the reporting requirement to OPM from annual reports to reports on an as-requested basis. Agencies would have to maintain the records necessary for such reports and for internal evaluation. The proposed wording more accurately reflects the fact that agencies have the primary responsibility for oversight. Agency contracting officers are responsible for proper performance of the contract for temporary help services. Additionally, agency expenditures for temporary help services are subject to the full range of internal controls and oversight, Inspector General reviews, and audits which apply to every service contract. Agency adherence with these regulations is subject to review under OPM's regular compliance and evaluation activities.

Finally, the proposal would make several editorial changes, for example, deleting reference to the Federal Personnel Manual, a document abolished on December 31, 1994, and adding a reference to temporary reassignments and time-limited promotions as mechanisms for agencies to accomplish work instead of using temporary help firms. The proposal would also clarify that agencies may not use temporary help services for the Senior Executive Service or for the work of managerial or supervisory positions.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities for the following reasons:

1. OPM is not regulating entities (including businesses) of any size, or imposing record keeping, reporting, or other compliance requirements on them. OPM is regulating the conduct of Federal agencies if they choose to use temporary help firms.

2. The requirements an entity must observe are generated through an agency-initiated contracting process featuring competitive bidding under the already-established, statutory Federal procurement system. That system applies to all contractors providing goods and services to the Government. The entities affected by that system are those who seek a contract. Those who win a contract receive a beneficial economic impact.

Executive Order 12866, Regulatory Review

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

List of Subjects in 5 CFR Part 300

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend part 300 of title 5, Code of Federal Regulations, as follows:

PART 300—EMPLOYMENT (GENERAL)

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

Authority: 5 U.S.C. 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.

Secs. 300.301 also issues under 5 U.S.C. 1104 and 3341.

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.

Secs. 300.801 through 300.802 issued under 5 U.S.C. 3328.

1. Section 300.502 is revised to read as follows:

§ 300.502 Coverage

(a) The regulations in this subpart apply to the competitive service and to Schedules A and B in the excepted service.

(b) Agencies may not use temporary help services for Senior Executive Service or for the work of managerial or supervisory positions.

2. In § 300.503 paragraph (c)(3) is added to read as follows:

§ 300.503 Conditions for using private sector temporaries.

* * * * *

(c) * * *

(3) To circumvent controls on employment levels.

3. In § 300.504, paragraphs (a) and (b) are revised to read as follows:

§ 300.504 Prohibition on employer-employee relationship.

* * * * *

(a) In accordance with the regulations in this subpart, an agency may use private sector temporaries in a particular situation for no more than 120 workdays. If the situation justifies use of temporary help services beyond the initial 120 workdays, the agency may request OPM authorization for an additional period not to exceed 120 workdays, up to a total of 240 workdays.

(b) An individual employee of a temporary help firm may work at a major organizational element (headquarters or field) of an agency for no more than 120 workdays in a 12 month period. An agency may request OPM authorization to keep the individual for an additional period not to exceed 120 workdays up to a total of 240 workdays:

(1) In conjunction with an extension of the overall time limit for a particular situation, or

(2) For a different situation if the using of the same individual would be in the interest of good administration.

* * * * *

4. Section 300.505 is revised to read as follows:

§ 300.505 Relationship of civil service procedures.

Agencies continue to have full authority to meet their temporary needs by various means, for example, redistributing work, authorizing overtime, using in-house pools, and making details or time-limited promotions of current employees. In addition, agencies may appoint individuals as civil service employees on various work schedules appropriate for the work to be performed.

5. Section 300.507 is revised to read as follows:

§ 300.507 Documentation and oversight.

Agencies are required to maintain records and provide oversight to establish that their use of temporary help service firms is consistent with the regulations in this subpart. As needed, OPM may request agencies to provide information on the extent of their use of temporary help service firms.

[FR Doc. 95–22317 Filed 9–7–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS–95–007]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would adjust representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act (Act) of 1985, to reflect changes in cattle inventories and cattle and beef imports that have occurred since the Board was reapportioned in 1993. These adjustments are required by the Beef Promotion and Research Order (Order) and would result in an increase in Board membership from 107 to 111, effective with the Secretary's 1996 appointments.

DATES: Comments must be received by October 10, 1995.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Room 2606–South Building, 14th and Independence Avenue, Southwest, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, on 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

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

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. Section 11 of the

Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

This action was also reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.). The Administrator of AMS has determined that this proposed action will not have a significant impact on a substantial number of small entities as defined by RFA since it only adjusts representation on the Board to reflect changes in domestic cattle inventory and imports.

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901 et seq.) and the Order issued thereunder (7 CFR 1260.101 et seq.). Domestic representation on the Board is based on cattle inventory numbers, and importer representation is based on the conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted by certified producer organizations. A producer may only be nominated to represent the unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years and not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to the Secretary modifications in the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically-contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit that has an additional one million head of cattle within a unit qualifies for additional representation on the Board as provided in § 1260.141(e)(4). As provided in § 1260.141(e)(3), importers are represented by a single unit, with the number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The initial Board appointed in 1986 was composed of 113 members. Reapportionment based on a 3-year average of cattle inventory numbers and import data, reduced the Board to 111 members in 1990 and 107 members in 1993.

The current Board representation by States or units has been based on an average of the January 1, 1990, 1991, and 1992 inventory of cattle in the various States as reported by the National Agricultural Statistics Service of the Department of Agriculture (USDA). Importer representation has been based on a combined total average of the 1989, 1990, and 1991 live cattle imports as published by the Foreign Agricultural Service (FAS) of USDA and the average of the 1989, 1990, and 1991 live animal equivalents for imported beef products.

Recommendations concerning Board reapportionment were approved by the Board at its July 24, 1995, meeting. In considering reapportionment, the Board reviewed cattle inventories as well as cattle, beef, and beef product import data for the period January 1, 1993, to January 1, 1995. The Board recommended that a 3-year average of cattle inventories and import numbers should be continued. The Board determined that an average of the January 1, 1993, 1994, and 1995 USDA cattle inventory numbers would best reflect the number of cattle in each State or unit since the 1993 reapportionment.

The Board reviewed the March 1995 FAS circular, ''U.S. Trade and Prospects, Dairy, Livestock, and Poultry,'' to determine proper importer representation. The Board recommended the use of a combined total of the average of the 1992, 1993, and 1994 cattle import data and the average of the 1992, 1993, and 1994 live animal equivalents for imported beef products. The method used to calculate the total number of live cattle equivalents was the same as that used in the previous reapportionment of the Board. The recommendation for importer representation is based on the most recent 3-year average of data available to the Board at its July 24, 1995, meeting to be consistent with the procedures used for domestic representation.

The Board's recommended reapportionment plan would increase the number of representatives on the Board from 107 to 111. Two States—Iowa and Ohio—lose one member each; three States—Missouri, Montana, and South Dakota—gain one member each; Texas, gains two members; and the importer unit gains one member. Nevada would lose its only member. Because Nevada does not have sufficient cattle inventory to qualify for a position on the Board, the Board proposes that Nevada be merged with Oregon, a contiguous State that has only one member, to form a Western unit. The combined cattle inventory of Nevada and Oregon would entitle that Western unit to two seats on the Board, thus enabling both States to be jointly represented. The States and units affected by the reapportionment plan and the current and proposed member representation per unit are as follows: (Units are listed with the State makeup recommended by the Board.)

States	Current representation	Proposed representation
1. Iowa	5	4
2. Missouri	4	5
3. Montana	2	3
4. Ohio	2	1
5. South Dakota	3	4
6. Texas	13	15
7. Western	0	2
Nevada	1	.....
Oregon	1	.....

The 1995 nomination and appointment process was in progress while the Board was developing its recommendations. Thus, the Board reapportionment as proposed by this rulemaking would be effective, if adopted, with 1996 nominations and appointments.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that 7 CFR part 1260 be amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 et seq.

2. In § 1260.141, paragraph (a) and the table immediately following it, are revised to read as follows:

§ 1260.141 Membership of Board.

(a) For Board nominations and appointments beginning with those in 1996, the United States shall be divided into 39 geographical units and one unit representing importers, and the number of Board members from each unit shall be as follows:

CATTLE AND CALVES [1]

State/Unit	(1,000 head)	Directors
1. Alabama	1,677	2
2. Arizona	863	1
3. Arkansas	1,837	2
4. California	4,617	5
5. Colorado	2,967	3
6. Florida	1,977	2
7. Georgia	1,477	1
8. Idaho	1,720	2
9. Illinois	1,813	2
10. Indiana	1,163	1
11. Iowa	4,183	4
12. Kansas	6,067	6
13. Kentucky	2,617	3
14. Louisiana	943	1
15. Michigan	1,210	1
16. Minnesota	2,750	3
17. Mississippi	1,353	1
18. Missouri	4,600	5
19. Montana	2,583	3
20. Nebraska	6,017	6
21. New Mexico	1,437	1
22. New York	1,503	2
23. North Carolina	1,063	1
24. North Dakota	1,857	2
25. Ohio	1,480	1
26. Oklahoma	5,333	5
27. Pennsylvania	1,783	2
28. South Carolina	513	1
29. South Dakota	3,833	4
30. Tennessee	2,450	2
31. Texas	14,667	15
32. Utah	867	1
33. Virginia	1,713	2
34. Wisconsin	3,883	4
35. Wyoming	1,383	1
36. Northwest	.....	2
Alaska	9	.....
Hawaii	173	.....

CATTLE AND CALVES [1]—Continued

State/Unit	(1,000 head)	Directors
Washington	1,353	.....
Total	1,535	.....
37. Northeast	.....	1
Connecticut	76	.....
Delaware	30	.....
Maine	116	.....
Massachusetts	69	.....
New Hampshire	49	.....
New Jersey	67	.....
Rhode Island	7	.....
Vermont	292	.....
Total	706	.....
38. Mid-Atlantic	.....	1
District of Columbia	0	.....
Maryland	310	.....
West Virginia	477	.....
Total	787	.....
39. Western	.....	2
Nevada	497	.....
Oregon	1,420	.....
Total	1,917	.....
40. Importer [2]	7,016	7

[1] 1993, 1994, and 1995 average.
[2] 1992, 1993, and 1994 average.

* * * * *

Dated: September 1, 1995

Lon Hatamiya,

Administrator.

[FR Doc. 95–22282 Filed 9–7–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. 93–076–7]

RIN 0579–AA59

Animal Welfare; Marine Mammals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The purpose of this notice is to announce the first meeting of the Marine Mammal Negotiated Rulemaking Advisory Committee.

DATES: September 25 and 26, 1995, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Holiday Inn at College Park, 10000 Baltimore Boulevard, Route 1, College Park, MD 20740, (301) 345–6700.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care Staff, REAC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–7833.

SUPPLEMENTARY INFORMATION: In a **Federal Register** notice published on May 22, 1995 (60 FR 27049–27051, Docket No. 93–076–3), we announced our intent to establish a Marine Mammal Negotiated Rulemaking Advisory Committee (Committee), chartered under the Federal Advisory Committee Act (Pub. L. 92–463). The Committee will advise the Department on the content of regulations to revise and update the standards for the handling, care, treatment, and transportation of marine mammals in captivity.

The purpose of the meeting is to bring together members of the Animal and Plant Health Inspection Service, representatives of the marine mammal industry, and representatives of other parties with a definable stake in marine mammal issues to frame a recommended rulemaking proposal as an alternative to the current standards for the care of captive marine mammals.

The proposed agenda for the meeting is as follows:

First Day

Morning Session—9 a.m.

APHIS Opening Remarks
Presentation of Agenda
Self-Introductions and Statements of Perspective by Committee Members and Facilitator
Development of Committee Procedures and Protocols

Afternoon Session—1:30 p.m.

Development of Committee Procedures and Protocols
Public Comments

Second Day

Morning Session—9 a.m.

Presentation of Agenda
Review of Substantive Marine Mammal Issues

Afternoon Session—1:30 p.m.

Review of Substantive Marine Mammal Issues

Discussion of Future Committee Meeting Agendas
Comments from the Public

The meetings will be open to the public. Public participation at the meetings will be allowed during periods announced at the meeting for this purpose. Anyone who wants to file a written statement with the Committee may do so at the time of the meeting or may do so after the meeting by sending the statement to Docket No. 93–076–7, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Comments mailed in should state that they refer to Docket No. 93–076–7 and must be received on or before October 10, 1995, to ensure consideration by the Committee.

This notice is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 1st day of September 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–22328 Filed 9–7–95; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, and 70

RIN 3150–AF38

One-Time Extension of Certain Byproduct, Source, and Special Nuclear Materials Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing, on a one-time basis, a five-year extension of certain byproduct, source, and special nuclear materials licenses. The provisions of the licenses under extension would provide the same authorizations and limits on licensee activities as they do now. The proposed rule specifies the licenses whose expiration dates would not be extended. On a separate but related matter, the Commission is considering the appropriate duration of materials licenses and seeks comments on this topic.

DATES: Submit comments by October 10, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, MD, 20852, between 7:45 am and 4:15 pm Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

FOR FURTHER INFORMATION CONTACT: John Pelchat, NRC, Region II, 101 Marietta Street, NW., suite 2900, Atlanta, GA 30323, telephone (404) 331–5083; or C.W. Nilsen, Office of Nuclear Regulatory Research, NRC, Washington, DC 20555, telephone (301) 415–6209.

SUPPLEMENTARY INFORMATION:

Background

The materials licensing (''licensing'') process sets out provisions for licensing medical, academic, and industrial users of byproduct materials as well as some small scope users of source and special nuclear materials. This process does not apply to the licensing of power and non-power reactors, uranium milling and processing facilities, or fuel production facilities. Recent NRC internal reviews and regulatory impact surveys of materials licensees (''licensees'') have highlighted areas in which the current materials licensing process can be improved. The NRC has completed the preliminary phases of an effort to redesign this process. The goals of the licensing process redesign project are (1) to maintain or raise the level of public safety achieved by the current process; (2) to perform licensing reviews and associated tasks an order of magnitude faster than the current process; (3) to utilize modern information technology as a fundamental part of the new process; and, (4) to reduce the resources needed to carry out the licensing program to meet the projected 1998–1999 staffing levels.

In order to make resources available to expedite the development, design, and testing of the proposed new materials licensing process, the Commission proposes to extend, by rulemaking, certain specific materials licenses (''licenses'') by five years from the current expiration dates shown on those licenses. Resources that would have otherwise been used to renew these licenses would be devoted to the redesign project. The extension would be a one-time occurrence and the Commission does not envision that any similar extensions would be granted in any future rulemaking. The extended licenses are not considered to be the equivalent of a renewed license because they would provide the same authorizations and limits on licensee activities as they do now. Accordingly, the extended licenses would not be based on or reference pending renewal applications, including requests, if any, in those renewal applications for NRC approval of changes in current operations. The frequency at which the licensee is inspected would not change. The Commission estimates that more than 80 percent of its 6,500 materials licenses would be extended by this proposed rulemaking.

The Commission believes that it may take this action because no legislative mandate requires that materials licenses have a five-year term. Many years ago, materials licenses were issued for two-year periods. As the uses of radioactive materials became more stable and predictable, the typical duration of licenses was changed to the current five years. The Commission believes that certain specific materials licenses may be extended once by rule for an additional five years beyond their stated expiration date without the normal renewal review and without adverse effect on public health and safety. The Commission's belief is based upon three factors. First, certain specific licenses for which the Commission believes that a renewal review should not be delayed five years would not be affected by this rule. Licenses that may present, in the Commission's view, a greater potential risk from a health and safety standpoint would not be extended by this rulemaking. These licenses are discussed in greater detail below and these licenses would be renewed in accordance with current schedules. Second, the extended licenses would not change the authorized activities or the regulatory requirements with which the licensees must comply. Third, the NRC will continue to inspect licenses that would be extended by this proposed rule. Significant inspection findings would be resolved through the issuance of Notices of Violations that require written responses describing corrective actions or Orders that would modify, suspend, or revoke the license. Accordingly, the Commission believes that there would be reasonable assurance of public health and safety under this rule.

The Commission believes that certain licenses, specified below, should be subject to the health and safety review currently required as part of the 5-year renewal review. These licenses would not have their license terms extended by

this proposed rule. The criteria listed below would be applied as of the effective date of the final rule so as to assure that any extensions are based on the most current information available.

- Any specific license that, on the effective date of the final rule, must have prepared an evaluation or an emergency plan for responding to the release of radioactive materials as required by 10 CFR 30.32(i), 40.31(j), or 70.22(i). The Commission believes that these licenses authorize activities that may pose a significant potential for release of radioactive materials and may result in potential exposure to the public and contamination of the environment. Therefore, renewals of these licenses should continue to be reviewed under existing procedures.
- Any specific licenses whose holders are subject to the financial assurance requirements specified in 10 CFR 30.35, 40.36, or 70.25; and on the effective date of the final rule the holders either (a) have not submitted a decommissioning funding plan or certification of financial assurance for decommissioning, or (b) have not received written notice that the decommissioning funding plan or certification of financial assurance for decommissioning is acceptable. These licenses authorize possession of quantities and forms of licensed materials that pose a potential need for extensive decontamination before termination of the license and release of decommissioned facilities. The Commission believes that renewals of these licenses should continue to be reviewed under existing procedures to ensure that the process of obtaining sufficient funding continues so that appropriate resources are available to support decommissioning activity.
- Any license, as of the effective date of the final rule, that is on the Site Decommissioning Management Plan (SDMP) list. Generally, licenses on the SDMP list are no longer actively using licensed materials. The Commission believes that these licenses should continue to be reviewed under existing procedures to ensure proper evaluation of site remediation activities at facilities where the licensee's radiation safety program may be inactive or scaled back.
- Any specific license whose issuance, amendment, or renewal, as of the effective date of the final rule, is not a categorical exclusion under 10 CFR 51.22(c)(14) and therefore needs an environmental assessment or environmental impact statement pursuant to Subpart A of Part 51 of this chapter. The Commission believes that these licenses authorize activities that may have a potential for impacting the environment. Therefore, renewals of these licenses should continue to be reviewed under existing procedures.
- Any specific license issued pursuant to 10 CFR Part 70 for which, as of the effective date of the final rule, the license holder is authorized to possess sufficient quantities of special nuclear material to be subject to the criticality accident requirements of 10 CFR 70.24. The Commission believes that renewals of these licenses should continue to be reviewed under existing procedures to ensure the adequacy of the licensees' important criticality safety procedures.
- Specific licenses whose holders have not had at least one prior NRC inspection of licensed activities as of the effective date of the final rule. The Commission believes that it is inappropriate to extend these licenses when it has not verified the effectiveness of the licensees' radiation safety programs by inspection. This verification is part of the safety basis upon which the NRC is relying. NRC inspection procedures require that all new licensees be inspected within six months of the issue date of their license. A few new licenses that might otherwise be extended may not be extended because they have not been inspected. Because the NRC is continually issuing new licenses, it is not practical to immediately inspect all new licensees to determine whether they satisfy the other criteria for the extension of their license expiration dates.
- Specific licenses whose holders, as the result of the most recent NRC inspection of licensed activities conducted before the effective date of the final rule, have either been (a) cited for a Severity Level I, II, or III violation in a Notice of Violation, (b) subject to an Order issued by the NRC, or (c) subject to a Confirmatory Action Letter issued by the NRC. The NRC has identified significant safety or other regulatory issues in these programs as a result of their most recent NRC inspection. The Commission believes that applications for renewal of these licenses should continue to be reviewed under existing procedures.

Apart from these licenses that the Commission has determined may pose a relatively greater risk to public health and safety, the Commission recognizes that there is another set of licenses that will not be extended by this rule. This set includes those licenses with expiration dates before July 1, 1995, whose holders have submitted applications for renewal pursuant to the renewal provisions specified in 10 CFR parts 30, 40, or 70. The Commission intends to continue to review the submissions of these licensees who have already submitted applications and fees for the renewal of their licenses and are deemed as being in timely renewal. Renewal requests will be granted as the NRC completes its review of those applications that satisfy the requirements specified in the regulations.

The proposed rule will extend the expiration date of those licenses with expiration dates after July 1, 1995, that are in a timely renewal status. As specified in the proposed rule, NRC will consider that these licensees have withdrawn their requests for renewal. Renewal fees paid by these licensees will be refunded.

The July 1, 1995, expiration date was chosen based on resource considerations. The NRC staff has begun the review of many applications for renewal of licenses with expiration dates before July 1, 1995, and it is not appropriate to waste the resources already expended in that effort. On the other hand, most of the applications for renewal of licenses with expiration dates after July 1,1995, have been received only recently, their review has not begun, and resources will be conserved by extending those licenses.

The Commission recognizes that an entity may hold more than one materials license issued under one or more parts of Title 10 of the Code of Federal Regulations. It is the Commission's intent that each license be considered separately in determining whether its expiration date should be extended under this rule. For example, assume that an entity holds two licenses, A and B, and License A is of the type listed in paragraph (a)(3) of §§ 30.36, 40.42, and 70.38 of this proposed rule, but License B is not. In this situation, the expiration date of License A would not be affected by the rule, but the expiration date of License B would be extended by a period of five years from the expiration date stated in the license.

The selective extension of byproduct, source, and special nuclear materials licenses would result in the freeing of Commission resources that would otherwise be used in the review of these renewal applications. These resources will then be redirected, in part, into the detailed design and testing of the proposed new materials licensing process.

Nothing in this rule relieves licensees from the requirements to file for appropriate amendments to their licenses, when changes in licensed activities occur.

If a licensee should elect not to take full advantage of the license extension, the licensee may request termination of

its license in accordance with the applicable requirements of 10 CFR parts 30, 40, or 70.

The Commission seeks comments on the issue of license duration. In conjunction with the licensing process redesign effort, the Commission also intends to consider the appropriate duration of materials licenses, including whether the duration should differ depending on the nature of the activities permitted under the license. The Commission is aware that for some types of licensed activities the industry has matured and it may be appropriate to consider issuing licenses for longer times, perhaps 10–20 years. The Commission is also aware that some Agreement States routinely issue licenses for periods longer than 5 years. The Commission seeks comments at this time on the general topic of the appropriate duration of licenses. If the Commission ultimately revises its policy on materials license duration, licensees with pending renewal applications that fulfill all regulatory requirements would be granted licenses consistent with the Commission's resolution of the license duration issue.

Agreement State Compatibility

The Commission has determined that the amended provisions of 10 CFR parts 30, 40, and 70 are not matters of compatibility for evaluating the regulations of States that have entered into agreements (Agreement States) with the Commission pursuant to Section 274.b of the Atomic Energy Act, as amended. Therefore, the States are not required to amend their regulations or licensing practices as a result of this rulemaking. However, the Commission is interested in receiving comments from the Agreement States on the regulatory implications of this proposed rule.

Electronic Access

Comments may be submitted through the Internet by addressing electronic mail to INTERNET:SECY@NRC.GOV. Comments may also be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Rulemaking Bulletin Board (BBS) on FEDWORLD.

The BBS is an electronic information system operated by the National Technical Information Service of the Department of Commerce. The purpose of this bulletin board BBS is to facilitate public participation in the NRC regulatory process, particularly rulemakings. With publication of this notice, proposed rulemakings and appropriate supporting documents will be available for review and comment on the BBS. These same documents are also available for review and comment at the NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. The BBS may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

The NRC rulemaking bulletin board (rulemaking subsystem) on FEDWORLD can be accessed directly by using a personal computer and modem, dialing the toll free number 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FEDWORLD consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FEDWORLD Online User's Guides'' particularly helpful. Many NRC subsystems and databases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FEDWORLD also can be accessed by a direct dial phone number for the main FEDWORLD BBS at 703–321–3339, or by using Telnet via Internet: fedworld.gov. Using the 703 number to contact FEDWORLD, the NRC subsystem will be accessed from the main FEDWORLD menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has the option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FEDWORLD command line. If you access NRC from FEDWORLD's main menu, you may return to FEDWORLD by selecting the ''Return to FEDWORLD'' option from the NRC Online Main Menu. However, if you access NRC at FEDWORLD by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FEDWORLD system.

If you contact FEDWORLD using Telnet, you will see the NRC area and menus, including the ''Rules Menu.'' Although you will be able to download documents and leave messages, you will not be able to write comments or upload files. If you contact FEDWORLD using File Transfer Program (FTP), all files can be accessed and downloaded, but uploads are not allowed, and all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FEDWORLD can be accessed through the World Wide Web as well, like FTP, that mode only provides access for downloading files and does not display the NRC ''Rules Menu.''

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Environmental Impact: Categorical Exclusion

The NRC has determined that these regulations are the type of actions described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval number 3150–0009 (Part 70) and 3150–0120 (Parts 30 and 40).

Regulatory Analysis

A regulatory analysis has not been prepared for this rule because it is not expected to have any adverse impact on licensees subject to the proposed rule. These licensees will be postponing, for five years, submission of license renewal applications and the associated fees.

Regulatory Flexibility Analysis

The NRC is seeking public comments on the potential impact of the proposed rule on small entities. The NRC particularly desires comments from small entities (i.e., small businesses, small organizations, and small jurisdictions under the Regulatory Flexibility Act) as to how the regulations will affect them and how the regulations may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety. Those small entities that offer comments on how the regulations could be modified to take into account the differing needs of small

entities should specifically discuss the following:

(a) The size of their business and how the proposed regulations would result in a significant economic burden upon them as compared to larger organizations in the same business community.

(b) How the proposed regulations could be modified to take into account their needs or capabilities.

(c) The benefits that would accrue, or the detriment that would be avoided, if the proposed regulations were modified as suggested by the commenter.

(d) How the proposed regulations, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to individuals or groups; and

(e) How the proposed regulations, as modified, would still adequately protect the public health and safety.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the Nuclear Regulatory Commission is proposing to adopt the following amendments to 10 CFR Parts 30, 40, and 70.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.36, paragraph (a) is revised to read as follows:

§ 30.36 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a)(1) Except as provided in paragraph (a)(2) of this section, each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under § 30.37 not less than 30 days before the expiration date stated in the existing license (or, for those licenses subject to paragraph (a)(2) of this section, 30 days before the deemed expiration date in that paragraph). If an application for renewal has been filed at least 30 days prior to the expiration date stated in the existing license (or, for those licenses subject to paragraph (a)(2) of this section, 30 days before the deemed expiration date in that paragraph), the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(2) Each specific license which has an expiration date after July 1, 1995, and is not one of the licenses described in paragraph (a)(3) of this section, shall be deemed to have an expiration date which is 5 years after the expiration date stated in the current license.

(3) The following specific licenses are not subject to, or otherwise affected by, the provisions of paragraph (a)(2) of this section:

(i) Specific licenses for which, on the [effective date of the final rule], an evaluation or an emergency plan is required in accordance with § 30.32(i);

(ii) Specific licenses whose holders are subject to the financial assurance requirements specified in § 30.35, and on the [effective date of the final rule], the holders either:

(A) Have not submitted a decommissioning funding plan or certification of financial assurance for decommissioning; or

(B) Have not received written notice that the decommissioning funding plan or certification of financial assurance for decommissioning is acceptable;

(iii) Specific licenses whose holders are listed in the Site Decommissioning Management Plan List [which will be available by the effective date of the final rule].

(iv) Specific licenses whose issuance, amendment, or renewal, as of the effective date of the final rule, is not a categorical exclusion under 10 CFR 51.22(c)(14) and, therefore, need an environmental assessment or environmental impact statement pursuant to subpart A of part 51 of this chapter;

(v) Specific licenses whose holders have not had at least one NRC inspection of licensed activities before [effective date of the final rule];

(vi) Specific licenses whose holders, as the result of the most recent NRC inspection of licensed activities conducted before the effective date of the final rule, have been:

(A) Cited for a Severity Level I, II, or III violation in a Notice of Violation;

(B) Subject to an Order issued by the NRC; or

(C) Subject to a Confirmatory Action Letter issued by the NRC.

(vii) Specific licenses with expiration dates before July 1, 1995, for which the holders have submitted applications for renewal under § 30.37 of this part.

* * * * *

3. In § 30.37, a new paragraph (b) is added to read as follows:

§ 30.37 Application for renewal of licenses.

* * * * *

(b) If any licensee granted the extension described in § 30.36(a)(2) has a currently pending renewal application for the extended license, that application will be considered withdrawn by the licensee and any renewal fees paid by the licensee for that application will be refunded.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

4. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as

amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

5. In § 40.42, paragraph (a) is revised to read as follows:

§ 40.42 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a)(1) Except as provided in paragraph (a)(2) of this section, each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under § 40.43 not less than 30 days before the expiration date stated in the existing license (or, for those licenses subject to paragraph (a)(2) of this section, 30 days before the deemed expiration date in that paragraph). If an application for renewal has been filed at least 30 days prior to the expiration date stated in the existing license (or, for those licenses subject to paragraph (a)(2) of this section, 30 days before the deemed expiration date in that paragraph), the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(2) Each specific license which has an expiration date after July 1, 1995, and is not one of the licenses described in paragraph (a)(3) of this section, shall be deemed to have an expiration date which is 5 years after the expiration date stated in the current license.

(3) The following specific licenses are not subject to, or otherwise affected by, the provisions of paragraph (a)(2) of this section:

(i) Specific licenses for which, on [effective date of the final rule], an evaluation or an emergency plan is required in accordance with § 40.31(j);

(ii) Specific licenses whose holders are subject to the financial assurance requirements specified in § 40.36, and on the effective date of the final rule, the holders either:

(A) Have not submitted a decommissioning funding plan or certification of financial assurance for decommissioning; or

(B) Have not received written notice that the decommissioning funding plan or certification of financial assurance for decommissioning is acceptable;

(iii) Specific licenses whose holders are listed in the Site Decommissioning Management Plan List [which will be available by the effective date of the final rule].

(iv) Specific licenses whose issuance, amendment or renewal, as of [effective date of the final rule], is not a categorical exclusion under 10 CFR 51.22(c)(14) and, therefore, need an environmental assessment or environmental impact statement pursuant to subpart A of part 51 of this chapter;

(v) Specific licenses whose holders have not had at least one NRC inspection of licensed activities before [effective date of the final rule];

(vi) Specific licenses whose holders, as the result of the most recent NRC inspection of licensed activities conducted before the effective date of the final rule, have been:

(A) Cited for a Severity Level I, II, or III violation in a Notice of Violation;

(B) Subject to an Order issued by the NRC; or

(C) Subject to a Confirmatory Action Letter issued by the NRC.

(vii) Specific licenses with expiration dates before July 1, 1995, for which the holders have submitted applications for renewal under § 40.43 of this part.

6. In § 40.43, a new paragraph (b) is added to read as follows:

§ 40.43 Renewal of licenses.

* * * * *

(b) If any licensee granted the extension described in § 40.42(a)(2) has a currently pending renewal application for the extended license, that application will be considered to be withdrawn by the licensee and any renewal fees paid by the licensee for that application will be refunded.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

7. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

8. In § 70.38, paragraph (a) is revised to read as follows:

§ 70.38 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a)(1) Except as provided in paragraph (a)(2) of this section, each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under § 70.33 not less than 30 days before the expiration date stated in the existing license (or, for those licenses subject to paragraph (a)(2) of this section, 30 days before the deemed expiration date in that paragraph). If an application for renewal has been filed at least 30 days prior to the expiration date stated in the existing license (or, for those licenses subject to paragraph (a)(2) of this section, 30 days before the deemed expiration date in that paragraph), the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(2) Each specific license which has an expiration date after July 1, 1995, and is not one of the licenses described in paragraph (a)(3) of this section, shall be deemed to have an expiration date which is 5 years after the expiration date stated in the current license.

(3) The following specific licenses are not subject to, or otherwise affected by, the provisions of paragraph (a)(2) of this section:

(i) Specific licenses for which, on [effective date of the final rule], an evaluation or an emergency plan is required in accordance with § 70.22(i);

(ii) Specific licenses whose holders are subject to the financial assurance requirements specified in § 70.25, and on [effective date of the final rule], the holders either:

(A) Have not submitted a decommissioning funding plan or certification of financial assurance for decommissioning; or

(B) Have not received written notice that the decommissioning funding plan or certification of financial assurance for decommissioning is acceptable;

(iii) Specific licenses whose holders are listed in the Site Decommissioning Management Plan List [which will be available by the effective date of the final rule].

(iv) Specific licenses whose issuance, amendment or renewal, as of [effective date of the final rule], is not a categorical exclusion under 10 CFR 51.22(c)(14) and, therefore, need an environmental assessment or environmental impact statement pursuant to subpart A of part 51 of this chapter;

(v) Specific licenses whose holders have not had at least one NRC inspection of licensed activities before [effective date of the final rule];

(vi) Specific licenses whose holders, as the result of the most recent NRC inspection of licensed activities conducted before the effective date of the final rule, have been:

(A) Cited for a Severity Level I, II, or III violation in a Notice of Violation:

(B) Subject to an Order issued by the NRC; or

(C) Subject to a Confirmatory Action Letter issued by the NRC.

(vii) Specific licenses with expiration dates before July 1, 1995, for which the holders have submitted applications for renewal under § 70.33 of this part.

(viii) Specific licenses issued pursuant to § 70.31 that, as of [effective date of the final rule], are also subject to the requirements in § 70.24.

9. In § 70.33, a new paragraph (b) is added to read as follows:

§ 70.33 Renewal of licenses.

* * * * *

(b) If any licensee granted the extension described in § 70.38(a)(2) has a currently pending renewal application for that extended license, that application will be considered withdrawn by the licensee and any renewal fees paid by the licensee for that application will be refunded.

Dated at Rockville, Maryland, this 29th day of August, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–22182 Filed 9–7–95; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

Loans to State and Local Development Companies Section 504 Loan Program Amendments

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule revises the regulations governing the collection of fees and the utilization of interest accruing in accounts established to administer the 504 loan program in order to permit the flexibility required in negotiating with private sector entities for the delivery of the 504 program.

DATES: Comments must be received on or before October 10, 1995.

ADDRESSES: Comments should be sent to LeAnn M. Oliver, Acting Director, Office of Rural Affairs and Economic Development, Small Business Administration, 409 3rd Street SW., suite 8300, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Acting Director, Office of Rural Affairs and Economic Development, Small Business Administration, Telephone (202) 205–6485.

SUPPLEMENTARY INFORMATION: The proposed rule would amend the rule governing the Central Servicing Agent (CSA) functions. The existing 504 program regulations were promulgated based upon the Agency's experience with a predecessor program. Sufficient experience has accumulated to allow the codification of approaches that have arisen in the administration of the program. This rule clarifies that: (1) Fees can be collected from the borrower of the proceeds of a debenture guaranteed under the program as a one-time initiation fee or a monthly servicing fee, (2) fees can be paid to the CSA from either a specific borrower's payment or from aggregated funds collected pursuant to a master service agreement, and (3) clarifies that 503 companies are to receive periodic pro rata disbursements of interest accruing on loan payments in the Master Reserve Account pending the debenture payment date.

Compliance with Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act and the Paperwork Reduction Act.

Executive Order 12866 and Regulatory Flexibility Act

SBA certifies that this proposed rule, if adopted, would *not* be a significant regulatory action for purposes of Executive Order 12866 and, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

1. It would *not* result in an annual economic effect of $100 million or more or adversely affect in a material way the economy, a sector or the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

2. It would *not* create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. It would *not* materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

4. It would *not* raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866

Executive Order 12612

SBA certifies that this rule, if adopted, would have no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA hereby certifies that this proposed rule, if adopted, would impose no new reporting or recordkeeping requirements.

Executive Order 12778

SBA certifies that this proposed rule is drafted, the extent practicable, in accordance with the standards set forth in section 2 of E.O. 12778.

List of Subjects in 13 CFR Part 108

Loan programs/business, Small businesses.

For the reasons set forth above, part 108 of the Code of Federal Regulations is amended as follows:

PART 108—[AMENDED]

1. The authority citation for part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697a, 697b, 697c.

Assistance Under Sections 504 and 505

§ 108.504 [Amended]

2. Section 108.504(e) is revised to read as follows:

* * * * *

(e) *Central Servicing Agent.* This subsection supersedes § 108.503–11 for loans funded under Section 504 and is applicable to all such loans whenever funded.

(1) SBA, in a master servicing agreement, shall designate a Central Servicing Agent (CSA) to act for all 503 companies participating in the sale of 504 Debentures, to ensure uniformity

and the orderly flow of funds among 504 loan recipients, 503 companies, and the Trustee or Transfer Agent (see § 108.505(f)(3) of this part). Pursuant to such master servicing agreement, in consideration of SBA's guaranty of the 503 company's debenture(s), the 503 Company, with the borrower's consent shall enter into a servicing agent agreement (504 program), SBA Form 1506, with the CSA. Execution of such form shall constitute acceptance by the 503 company and the borrower of the terms of the master servicing agreement. Amendments may be made in the terms and conditions of the master servicing agreement as necessary to adapt to changing program needs.

(2) The borrower may be charged an initiation fee and/or a monthly servicing fee as prescribed by Form 1506, which shall be in addition to the fees and charges permitted by § 108.503–6 of this part.

(3) The CSA may be compensated through an initiation fee and/or a monthly service fee. Pursuant to instructions in the master servicing agreement, the CSA's compensation may be paid from initiation fees on specific loans or from aggregated service fees.

(4) SBA Form 1506 shall prescribe the deposits into and the disbursements from a master reserve account, set up by the CSA pursuant to said master servicing agreement. The master reserve account shall be funded by a reserve deposit, and a funding fee to be published from time to time in the **Federal Register**, and by principal and interest payments of 504 loans. SBA shall add funds pursuant to its guaranty to insure the full and timely payment of the debentures in the event a borrower fails to make full and timely payment on its 504 loan. Funds in the master reserve account shall be used to defray expenses of the program described under paragraph (b) of this section. Interest accruing on loan payments between the date of monthly payment and the debenture payment date shall be paid to the 503 company servicing the loan and shall be disbursed to 503 companies periodically on a pro rata basis. Funds in the master reserve escrow account representing interest earned prior to October 1991 and not distributed to a specific 503 company may be expended by SBA for the purposes of program administration.

* * * * *

(Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 Loans)).

Dated: June 29, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–22064 Filed 9–7–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–SW–16–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 206A and 206B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 206A and 206B helicopters, that currently requires an inspection of the main transmission input driveshaft assembly (driveshaft) at intervals of 300 hours time-in-service (TIS); the application of a zinc chromate primer inspection visual aid; and, daily visual checks of the driveshaft. This action would require inspections of the driveshaft at intervals of 300 hours TIS; the application of a self-adhesive temperature indicator visual inspection aid; and, preflight visual owner/operator (pilot) checks of the driveshaft. This proposal is prompted by recent studies that indicate that self-adhesive temperature indicators are a more reliable means of detecting overheat conditions on grease-lubricated couplings than the zinc chromate primers that are currently in use. The actions specified by the proposed AD are intended to prevent failure of the driveshaft due to coupling wear or overheating, which could result in loss of power to the main rotor and a subsequent forced emergency landing.

DATES: Comments must be received by November 7, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–16–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron, Inc., Product Support Dept., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Jurgen Priester, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, Fort Worth, Texas 76193–0170, telephone (817) 222–5159; fax (817) 222–5959.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 94–SW–16–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–16–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On January 26, 1981, the FAA issued AD 81–04–08, Amendment 39–4037 (46 FR 12469, February 17, 1981), to require an inspection of the driveshaft at intervals of 300 hours TIS; the application of a zinc chromate primer

inspection visual aid; and, daily visual checks of the driveshaft that may be performed by the pilot. That action was prompted by reports of excessive wear and failures of the driveshaft. The requirements of that AD are intended to prevent failure of the driveshaft due to coupling wear or overheating, which would result in loss of power to the main rotor and a forced emergency landing.

Since the issuance of that AD, manufacturer's studies have shown that self-adhesive temperature indicators are a more reliable means of detecting overheat conditions on grease-lubricated couplings than zinc chromate primers. BHTI has issued Alert Service Bulletin (ASB) No. 206–93–76, Revision B, dated September 6, 1994, which describes procedures for the application of a self-adhesive temperature indicator, as well as for repetitive visual checks of the driveshaft for grease leakage from the grease-lubricated couplings, overheating, and security of the clamps and bolts used to attach the driveshaft to transmission and engine couplings. The checks described in this proposal before the first flight of each day may be performed by a pilot, but must be entered into the aircraft records showing compliance with the AD in accordance with sections 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations. This notice proposes to allow a pilot to perform these checks because they involve only a visual check for grease leakage, overheating, and security of the clamps and bolts used to attach the driveshaft to transmission and engine couplings. These checks can be performed equally well by a pilot or a mechanic. They involve checking items similar to those items that a pilot checks during a preflight check. This notice proposes that a mechanic inspect the driveshaft and driveshaft couplings at intervals of 300 hours TIS.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI Model 206A and 206B helicopters of the same type design, the proposed AD would supersede AD 81–04–08 to require inspections of the driveshaft at intervals of 300 hours TIS; the application of a self-adhesive visual over-temperature indicator; and, preflight visual pilot checks of the driveshaft. The actions would be accomplished in accordance with BHTI ASB No. 206–93–76, Revision B, dated September 6, 1994, described previously.

The FAA estimates that 4,312 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately one and one-half work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no charge, but installation materials would cost approximately $10 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $431,200.

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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–4037 (46 FR 12469, February 17, 1981), and by adding a new airworthiness directive (AD), to read as follows:

Bell Helicopter Textron, Inc.: Docket No. 94–SW–16–AD. Supersedes AD 81–04–08, Amendment 39–4037.

Applicability: Model 206A and 206B helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main transmission input driveshaft assembly (driveshaft) due to coupling wear or overheating, which could result in loss of power to the main rotor and a subsequent forced emergency landing, accomplish the following:

(a) Before the first flight of each day after the effective date of this AD, visually check the driveshaft, part number (P/N) 206–040–100–13, for: (1) Grease leakage from the driveshaft coupling, P/N 206–040–108–005; and (2) visual damage and security of the clamps and bolts used to attach the driveshaft to the transmission and engine couplings. After compliance with paragraph (d) of this AD, also check the self-adhesive visual over-temperature indicators (over-temperature indicators) for overheating, deterioration, debonding, or discoloration in accordance with Part II of the Accomplishment Instructions of Bell Helicopter Textron, Inc. (BHTI) Alert Service Bulletin (ASB) No. 206–93–76, Revision B, dated September 6, 1994. If any grease leakage exists, or if there are indications of overheating, disassemble and inspect the driveshaft in accordance with the applicable maintenance manual, and replace the over-temperature indicators in accordance with Part III of the Accomplishment Instructions of BHTI ASB 206–93–76, Revision B, dated September 6, 1994.

(b) The visual check required by paragraph (a) may be performed by an owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with this AD in accordance with sections 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations.

(c) Inspect and lubricate the driveshaft assembly, P/N 206–040–100–13, and driveshaft grease-lubricated couplings, P/N 206–040–108–005, in accordance with the helicopter's maintenance manual and according to the compliance schedule that follows, and thereafter, inspect and lubricate at intervals not to exceed 300 hours time-in-service (TIS):

(1) For helicopters with 250 hours TIS or more, compliance is required within the next 50 hours TIS; or,

(2) For helicopters with less than 250 hours TIS, compliance is required prior to attaining 300 hours TIS.

(d) Install the over-temperature indicators at the next 300 hours TIS driveshaft coupling inspection and lubrication in accordance with Part I of the Accomplishment Instructions of BHTI ASB 206–93–76, Revision B, dated September 6, 1994.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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

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

Issued in Fort Worth, Texas, on August 31, 1995.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–22338 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 94–NM–237–AD]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that currently requires repetitive purging of the hydraulic system and installation of a spoiler actuator that has been previously certified. That AD was prompted by a report of damage to the locking mechanisms on some pistons of the spoiler actuators. The actions specified by the AD are intended to prevent uncommanded extension of the lift spoiler in the event of loss of hydraulic pressure in the spoiler actuator. This action would establish an increased life limit for certain spoiler actuators, and provide an optional terminating action for the requirements of the AD. It would also limit the applicability of the rule to fewer airplanes.

DATES: Comments must be received by October 16, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–237–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–237–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–237–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 12, 1994, the FAA issued AD 94–17–12, amendment 39–9007 (59 FR 43025, August 22, 1994), applicable to certain Jetstream Model 4101 airplanes, to require repetitive purging of the hydraulic system and repetitive installation of an actuator that has been previously certified. That action was prompted by a report of damage to the locking mechanisms on some pistons of the spoiler actuators. The cause of this damage has been attributed to inadequate purging of the spoiler hydraulic system. In some instances, the spoiler operation was out of sequence and may have caused damage to the locking mechanisms on the pistons of the spoiler actuators. The requirements of that AD are intended to prevent uncommanded extension of the lift spoiler in the event of loss of hydraulic pressure in the spoiler actuator.

Since the issuance of that AD, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, has advised the FAA that a standard life limit has been established for Lucas Aerospace spoiler actuators having part numbers TY1763–01A and TY1763–01B. The new life limit has been established at the current declaration of design performance (DDP) life of 5,000 hours time-in-service since new. Therefore, unless a spoiler actuator would fail to perform correctly beforehand, these actuators are permitted to remain installed on the airplane for an interval not to exceed 5,000 hours time-in-service, at which time they must be replaced. The CAA also has advised that compliance with this 5,000-hour life limit on these particular spoiler actuators terminates the need for the currently required repetitive purging of the actuators' hydraulic system and repetitive installation of newly-certified actuators (those marked with an ''R'' after the serial number) each 500 hours time-in-service.

Additionally, the CAA has advised that, based on further review, fewer airplanes are subject to the identified unsafe condition than previously considered.

Jetstream has issued Service Bulletin J41–A27–034, Revision 1, dated October 28, 1994, which describes procedures for a one-time removal of the left and

right spoiler actuators, purging the hydraulic system, and installation of a previously certified spoiler actuator. This revised service bulletin specifies a life limit of 5,000 hours time-in-service for certain Lucas Aerospace spoiler actuators; if these spoiler actuators are replaced at this life limit, the need for repetitive purging of the hydraulic system and repetitive installation of newly-certified actuators is eliminated. Additionally, the effectivity listing of the revised service bulletin eliminates certain airplanes that were specified in the original issue of the service bulletin; these airplanes have been eliminated because they have been determined not to be subject to the addressed unsafe condition. The CAA classified this revised service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

Jetstream has also issued Service Bulletin J41–27–037, dated November 7, 1994, which describes the installation of Modification JM 41381. This modification involves the installation of improved spoiler actuators (having improved purging capability) on the left and right wings. Installation of these improved actuators eliminates: (1) the need for repetitive purging of the hydraulic system and repetitive installation of newly-certified actuators; and (2) the need for a 5,000 hour time-in-service life limit on the (Lucas Aerospace) actuators. The CAA classified this revised service bulletin as optional.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 94–17–12. It would continue to require repetitive purging of the hydraulic system and installation of an actuator that has been previously certified marked with an ''R'' after the serial number. These actions are required to be performed every 500 landings.

This proposal would revise the existing AD by requiring that certain Lucas Aerospace spoiler actuators be replaced at intervals of 5,000 hours time-in-service (on the actuator). Such replacement would terminate the current requirement to repetitively purge the hydraulic system and install newly-certified actuators every 500 landings. It would also revise the applicability of the existing rule to delete certain airplanes. The actions would be required to be accomplished in accordance with Jetstream Service Bulletin J41–A27–034, Revision 1, described previously.

This proposal would also provide for an optional action to terminate both the repetitive purging and installation requirements, as required by the existing AD; and the 5,000 hour time-in-service life limit on certain actuators, as required by this new AD. This optional terminating action consists of installing improved actuators (Modification JM 41381) in accordance with Jetstream Service Bulletin J41–27–037, described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The FAA estimates that 17 airplanes of U.S. registry would be affected by this proposed AD.

The repetitive purging and installation actions that are currently required by AD 94–17–12 take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact on U.S. operators of the actions currently required is estimated to be $6,120, or $360 per airplane.

Replacement of the spoiler actuator at the newly established life limit would add no new costs to affected operators. In fact, it would reduce the economic burden for most operators, since: (1) Repetitive purging of the actuators would be eliminated, and (2) replacement of the actuators will not have to be accomplished as often as was previously required. Additionally, some of the replacement actuators would be provided to operators free of charge by the manufacturer.

Further, since this proposed AD would be applicable to fewer airplanes than was AD 94–17–12, the total cost impact of the AD would be reduced by the amount of labor and parts costs that would previously have been applied to those additional airplanes.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9007 (59 FR

43025, August 22, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Jetstream Aircraft, Limited: Docket 94–NM–237–AD. Supersedes AD 94–17–12, Amendment 39–9007.

Applicability: Model 4101 airplanes; having constructors numbers 41004 through 41015 inclusive, 41018 through 41026 inclusive, 41028 through 41030 inclusive, and 41032; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded extension of the lift spoiler in the event of loss of hydraulic pressure in the spoiler actuator, accomplish the following:

(a) Within 21 days after September 6, 1994 (the effective date of AD 94–17–12, amendment 39–9007), remove the spoiler actuators in accordance with Jetstream Alert Service Bulletin J41–A27–034, dated June 9, 1994, or Revision 1, dated October 28, 1994. Following removal of the actuators, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, in accordance with the service bulletin. Thereafter, repeat the requirements of this paragraph at intervals not to exceed 500 landings.

(1) Prior to further flight, purge the hydraulic system to ensure that there is no contamination.

(2) Prior to further flight, install a spoiler actuator that has been previously certified and marked with an ''R'' after the serial number on the nameplate of the actuator.

(b) For spoiler actuators having Lucas Aerospace part number (P/N) TY1763–01A or P/N TY1763–01B: Prior to the accumulation of 5,000 total hours time-in-service on the spoiler actuator, or within 30 days after the effective date of this AD, whichever occurs later, replace the actuator with a new or serviceable part, in accordance with Jetstream Service Bulletin J41–A27–034, Revision 1, dated October 28, 1994. Thereafter, prior to the accumulation of 5,000 hours time-in-service on the spoiler actuator, replace the actuator with a new or serviceable part, in accordance with the service bulletin. Such replacement constitutes terminating action for the repetitive purging and repetitive installation requirements of paragraph (a) of this AD.

(c) Installation of improved spoiler actuators (Modification JM 41381) on the left and right wings, in accordance with Jetstream Service Bulletin J41–27–037, dated November 7, 1994, constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

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

Issued in Renton, Washington, on September 1, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22302 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–13–O

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 312 and 314

[Docket No. 95N–0010]

Investigational New Drug Applications and New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations pertaining to investigational new drug applications (IND's) and new drug applications (NDA's). The proposed rule would clearly define in the NDA format and content requirements the need to present effectiveness and safety data for important demographic subgroups, specifically gender, age, and racial subgroups. The rule would codify expectations that FDA has previously described in guidance. The proposed amendments would also require IND sponsors of drugs, including biological products, to characterize, in their annual reports, the number of subjects in a clinical study according to age group, gender, and race. The proposed rule does not address the requirements for the conduct of clinical studies and would not require sponsors to conduct any more studies than they have already conducted. It also would not require the inclusion of particular numbers of individuals from specific subgroups in any study or overall. The rule refers only to the presentation of data already collected. The scope of this proposal does not extend to requiring additional studies or data.

DATES: Written comments by December 7, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Deborah A. Wolf, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1046.

SUPPLEMENTARY INFORMATION: The proposed rule would amend the NDA content and format regulations at 21 CFR 314.50 to explicitly require that sponsors submit effectiveness and safety data by gender, age, and racial subgroups and other subgroups of the population of patients treated, as appropriate, such as patients with renal failure or patients with different levels of severity of disease. In the **Federal Register** of July 22, 1993 (58 FR 39406), FDA published a guideline entitled ''Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs.'' The guideline provided guidance on FDA's expectations regarding inclusion of both men and women in drug development, analyses of clinical data by gender, assessment of potential pharmacokinetic differences between genders, and conduct of specific additional studies in women, where indicated. The preamble to the guideline described the development of the agency's policy regarding the evaluation of clinical data by gender. The guideline noted that over the preceding decade there had been growing concern that the drug development process did not produce adequate information about the effects of drugs in women (58 FR 39406). Analyses of published clinical trials in certain therapeutic areas had indicated that there had been little or no participation by women in many of the studies. There had also been little study of the effects of such aspects of female

physiology as the menstrual cycle and menopause or of the effects of oral contraceptives and systemic progestins and estrogens on drug action and pharmacokinetics.

The guideline also explained that concerns about the adequacy of data on the effects of drugs in women have arisen in the context of an increasing awareness of the need to individualize treatment in the face of the wide variety of demographic, disease-related, and individual patient-related factors that can lead to different responses in subsets of the population. Optimal use of drugs requires identification of these factors so that appropriate adjustments in dose, concomitant therapy, or monitoring can be made. The guideline was part of FDA's effort to address the need to gather and evaluate data from various subpopulations in clinical drug trials. The agency had previously addressed the need to develop information on the elderly in the 1989 guideline entitled, ''Guideline for the Study of Drugs Likely to be Used in the Elderly.'' That guideline provided similar guidance regarding inclusion of elderly patients in clinical trials and assessment of clinical and pharmacokinetic differences between older and younger patients.

In 1983 and 1989, FDA examined the relative numbers of individuals from two important demographic subgroups, women and the elderly, in the data bases of NDA's. The agency found that, in general, the proportions of women and men included in the clinical trials were similar to the respective proportions of women and men who had the diseases for which the drugs were being studied, taking into account the age range of the population studied. The General Accounting Office (GAO) conducted a larger study of drugs approved during the period 1988 through 1991, and found similar proportions. Women were found to typically represent a majority of patients in NDA data bases of drugs used to treat conditions more common, or more commonly treated, in women, and a minority, generally a sizable one, in tests of drugs for conditions that occur predominantly in males in the age range usually included in the clinical trials.

Although women have been included in the later phases of clinical trials, the agency believes that inclusion alone is not sufficient for adequate assessment of potential gender differences. There must be an effort to use the data to discover such differences, and the agency found that this effort was not made. Various documents published by the agency have reflected the need to examine gender as well as other characteristics for their effects on drug response. FDA's regulations on NDA content and format require the clinical data section of the NDA to include, among other things, ''An integrated summary of the data demonstrating substantial evidence of effectiveness for the claimed indications. Evidence is also required to support the dosage and administration section of the labeling, including support for the dosage and dose interval recommended, and modifications for specific subgroups (for example, pediatrics, geriatrics, patients with renal failure)'' and an integrated summary of safety. (See 21 CFR 314.50(d)(5)(v) and (d)(5)(vi)(*a*)). The examples of subgroups listed in § 314.50(d)(5)(v) were not intended to be a complete list or to limit the subgroups for which data should be submitted. In 1988, in a guideline entitled, ''Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications,'' FDA discussed analyses of population subsets within NDA data bases to look for differences in effectiveness and adverse reactions to drugs. The guideline describes the population subsets to include subsets such as different genders, age groups, and races, and other subsets such as people receiving other drug therapy and people with concurrent illnesses. See, ''Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications'' at pages 32 and 40. The guideline describes the need for clinical data beyond the specific subgroups and categories of information set forth in the current regulations.

The current wording of § 314.50, while not intended to limit the analyses to be carried out does not fully reflect the need to present the safety and effectiveness data by subgroup and omits important subgroups, including gender and racial groups. The proposal would make explicit the agency's requirements concerning the data that are presented in NDA's. It would make clear the need to present safety and effectiveness data by gender, age, and racial subgroups to allow a determination, to the extent the data permit, of whether these factors affect results of treatment or alter dosing requirements.

FDA believes that it is important to make such an explicit requirement. After the publication of the 1988 guideline, FDA and GAO examined data bases for NDA's to see whether the analyses to which the guideline refers were being conducted and submitted. Both of the examinations found that in about half of the cases the data bases were not being analyzed to determine whether there were differences in response to drugs between the two genders or among different racial groups and age groups. Thus, changes that the proposal would make to § 314.50 would codify what the agency has already identified as important elements of clinical data.

FDA also believes that to codify the need for presentations of data by subgroups will provide industry with clear information regarding potential consequences of the absence of subgroup data. The agency's regulation governing the filing of an application, which is set forth in 21 CFR 314.101, provides that the Center for Drug Evaluation and Research may refuse to file an NDA that, among other things, is not submitted in the form required under § 314.50 or that is incomplete because it does not on its face contain information required under section 505(b) of the Federal Food, Drug and Cosmetic Act. 21 CFR 314.101(d)(3). The refusal to file policy attempts to direct FDA's resources to applications complete enough for review. The agency's ''New Drug Evaluation Guidance Document: Refusal to File'' describes situations in which FDA applies the provision in § 314.101(d)(3) to make refusal to file decisions. In particular, the document explains that omission of critical data, information or analyses needed to evaluate effectiveness and safety or provide adequate directions for use is an appropriate basis for a refusal to file. Among the particular considerations in refusal to file decisions is a ''clearly inadequate evaluation for safety and/or effectiveness of the population intended to use the drug, including pertinent subsets, such as gender, age, and racial subsets.'' Thus, the proposal would allow sponsors to know from the beginning that data that are not presented with regard to gender, age, and racial groups are grounds for a refusal to file.

It is important to note that the rule does not address the requirements for the conduct of clinical studies and that this proposal would not require sponsors to conduct any more studies than they have already conducted. It also does not require the inclusion of particular numbers of individuals from specific subgroups in any study or overall. The rule refers only to the presentation of data already collected. The scope of this proposal does not extend to requiring additional studies or data.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a

type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Investigational New Drug Applications and New Drug Applications.

Description: The information submitted by respondents pursuant to the proposed regulatory revisions would assist the agency in monitoring the success of drug companies in enrolling in clinical drug trials subjects representing various subgroups of the population expected to use the drug being tested once it is approved and marketed and in better evaluating the safety and efficacy profiles of drugs for various subgroups.

Description of respondents: Businesses, nonprofit institutions, small businesses.

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
312.33(a)(2)	1,616 (noncommercial)	1	2 hours	3,232
312.33(a)(2)	362 (commercial)	1	8 hours	2,896
314.50	50	1	40 hours	2,000
Total				8,128

The agency has submitted a copy of this proposed rule to OMB for review of these information collections. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The proposed rule does not require any change in the studies a drug manufacturer needs to conduct or impose any requirements on the conduct of those studies. It requires only a presentation of data already collected. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

This proposed rule would amend the IND regulations to enable FDA and sponsors of drugs, including biological products, to monitor the sponsor's success in studying the populations that are likely to receive the drug once it is approved. Under the current IND regulations in § 312.33(a)(2) (21 CFR 312.33(a)(2)), sponsors are required to submit an annual report that includes for each study, among other things, ''The total number of subjects initially planned for inclusion in the study, the number entered into the study to date, the number whose participation in the study was completed as planned, and the number who dropped out of the study for any reason.'' The proposed rule would amend § 312.33(a)(2) to require that the annual report include the number of subjects entered into the study ''characterized by age group, gender, and race.'' Reporting and reviewing this information would not itself represent a need for new studies or patients. The agency is aware that many clinical trials do not contain enough patients from various subgroups to perform statistically rigorous comparisons of outcomes between subgroups. The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Request for Comments

Interested persons may, on or before December 7, 1995, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 312 and 314 be amended to read as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

2. Section 312.33 is amended by revising paragraph (a)(2) to read as follows:

§ 312.33 Annual reports.

* * * * *

(a) * * *

(2) The total number of subjects initially planned for inclusion in the study; the number entered into the study to date, characterized by age group, gender, and race; the number whose participation in the study was completed as planned; and the number who dropped out of the study for any reason.

* * * * *

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

3. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 379e).

4. Section 314.50 is amended by revising the second sentence and adding two new sentences after the second sentence in paragraph (d)(5)(v) and by adding two new sentences after the first sentence in paragraph (d)(5)(vi)(a) to read as follows:

§ 314.50 Content and format of an application.

* * * * *

(d) * * *

(5) * * *

(v) * * * Evidence is also required to support the dosage and administration section of the labeling, including support for the dosage and dose interval recommended. The effectiveness data shall be presented by gender, age, and racial subgroups. Effectiveness data from other subgroups of the population of patients treated, as appropriate, such as patients with renal failure or patients with different levels of severity of disease, shall also be presented.

(vi) * * *

(a) * * * The safety data shall be presented by gender, age, and racial subgroups. Safety data from other subgroups of the population of patients treated, as appropriate, such as patients with renal failure or patients with different levels of severity of disease, shall also be presented. * * *

* * * * *

Dated: July 11, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–22297 Filed 9–7–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 552

RIN 1215–AA82

Application of the Fair Labor Standards Act to Domestic Service

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: This document reopens and extends the period for filing written comments on a proposed revision to § 552.109 of Regulations, 29 CFR part 552, which was published in the **Federal Register** on December 30, 1993 (58 FR 69310), to clarify the minimum wage and overtime exemption under the Fair Labor Standards Act (FLSA) for certain employees of third-party employers who provide domestic companionship services. The Department is continuing to consider this particular proposal, and this action is taken in order to obtain additional comments from interested parties. A separate final rule published elsewhere in this issue amends 29 CFR part 552 to incorporate changes necessitated by amendments to Title II of the Social Security Act, which were enacted October 22, 1994, as Pub. L. 103–387 (Social Security Domestic Employment Reform Act), and makes other updating and technical revisions as proposed in the notice of December 30, 1993.

DATES: Comments are due on or before November 7, 1995.

FOR FURTHER INFORMATION CONTACT: Richard M. Brennan, Acting Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3506, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended; 29 U.S.C. 201 *et seq.*), as amended by the Fair Labor Standards Amendments of 1974 (Pub. L. 93–259, 88 Stat. 55), extended with certain exceptions the FLSA's minimum wage, overtime pay, and recordkeeping provisions to domestic service employees whose compensation for services would constitute wages under section 209(g) of Title II of the Social Security Act, *or* who are employed by one or more employers for more than 8 hours in the aggregate in any workweek. Section 13(a)(15) of the FLSA provides an exemption from the minimum wage and overtime pay requirements of the Act for ''employees employed on a casual basis in domestic service employment to provide babysitting services,'' and for domestic service employees employed ''to provide companionship services for individuals who * * * are unable to care for themselves.'' Section 13(b)(21) provides an overtime exemption for domestic service employees who reside in the household in which they are employed. On February 20, 1975, regulations and interpretations implementing the domestic service employment provisions of the FLSA were published in the **Federal Register** (40 FR 7405) at 29 CFR part 552.

The Department published a notice of proposed rulemaking in the **Federal Register** on December 30, 1993 (58 FR 69310), inviting public comments until February 28, 1994, which, among other things, would revise § 552.109 to clarify that, in order for the exemptions in FLSA sections 13(a)(15) and 13(b)(21) to apply, employees engaged in providing companionship services and live-in domestic service employees who are employed by a third-party employer or agency must also be ''jointly'' employed by the family or household using their services. In addition, the Department invited public comments on certain updating and technical changes to 29 CFR part 552.

The Department proposed to revise § 552.109 to provide, consistent with rulings of the Wage-Hour Administrator, that companions and live-in domestics employed by third-party employers are eligible for the exemptions in FLSA sections 13(a)(15) and 13(b)(21) only where the individuals are also employed by the family or household using their services. This clarification was considered necessary in order to make the underlying definition of ''domestic service employees'' (*i.e.*, someone who performs services of a household nature ''in or about a private home * * * of the person *by whom he or she is employed* * * *'') at § 552.101 internally consistent with § 552.109, applicable to domestic service employees who provide ''companionship services.''

A total of 7 comments were received in response to the notice. All focused their remarks on the proposed revision

to § 552.109 concerning joint employment and third-party employers. After review of the comments received to date, the Department has concluded that it is appropriate to continue the rulemaking on the proposed revision to § 552.109. With respect to the updating and technical changes that were proposed in the December 1993 notice, they are adopted in a final rule published elsewhere in this issue. This separate document also revises Regulations, 29 CFR part 552, to incorporate changes necessitated by amendments to Title II of the Social Security Act which were enacted October 22, 1994, as Public Law 103–387 (Social Security Domestic Employment Reform Act).

Based on the comments received to date, the Department wishes to consider the implications of its proposed revision on situations where State and local governments provide companion services to the elderly or infirm, as well as situations where the companion is employed by a family member. The Department is considering revising the proposal to allow the exemption to apply to employment, either jointly with a third party agency or otherwise, by a government agency or family member, where the government agency or family member is acting on behalf of an elderly or infirm person who is unable to act on his or her own behalf. The Department is therefore reopening the comment period in order to receive additional comments relating to this proposal.

The Department is particularly interested in receiving information on the companion services provided by State and local governments, and the relationship between the government and the elderly or infirm person to whom the service is provided.

Signed at Washington, DC, on this 31st day of August 1995.

Maria Echaveste,

Administrator, Wage and Hour Division.

As a convenience to the readers of this document, the proposed revisions to § 552.109 which were published in the **Federal Register** document of December 30, 1993 (53 FR 69310), are republished as follows:

PART 552—APPLICATION OF THE FAIR LABOR STANDARDS ACT TO DOMESTIC SERVICE

7. In § 552.109, paragraphs (a) and (c) are proposed to be revised to read as follows:

§ 552.109 Third party employment.

(a) Employees who are engaged in providing companionship services, as defined in § 552.6, and who are employed by an employer or agency other than the family or household using their services, are exempt from the Act's minimum wage and overtime pay requirements by virtue of section 13(a)(15), provided that they are also employed by the person in whose home the services are provided, *i.e.*, a joint employment relationship must exist (*see* 29 CFR Part 791). The assignment of such an employee to more than one household or family in the same workweek would not defeat the exemption for that workweek, provided that the services rendered during each assignment come within the definition of companionship services.

(b) * * *

(c) Live-in domestic service employees who are employed by an employer or agency other than the family or household using their services are exempt from the Act's overtime requirements by virtue of section 13(b)(21), provided that they are also employed by the person in whose home the services are provided, *i.e.*, a joint employment relationship must exist. This exemption, however, will not apply where the employee works only temporarily for any one family or household, since the employee would not be ''residing'' on the premises of such family or household.

[FR Doc. 95–22142 Filed 9–7–95; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1206

[RIN 3095–AA43]

National Historical Publications and Records Commission; Grant Program Procedures

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Archives and Records Administration (NARA) proposes to update and clarify current regulations in 36 CFR Part 1206 relating to the National Historical Publications and Records Commission (NHPRC) grant program. In particular, language has been revised to reflect an internal reorganization; to address revisions to the state historical records coordinator and advisory board program; to include mention of archival administration and documentary editing fellowships for individuals; to include prior approval requirements for changes in the grant project; to cite Office of Management and Budget Circulars A–110, A–128 and A–133, which stipulate requirements for grant administration and audit; and to make grantees aware of the lobbying certification requirement for grants of $100,000 or more. The rule will affect NHPRC applicants and grantees.

DATES: Comments must be received by November 7, 1995.

ADDRESSES: Comments should be sent to Director, Policy and Planning Division (PIRM–POL), National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at 301–713–6730.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the National Historical Publications and Records Commission (NHPRC) is to promote the preservation and use of historically significant documents. The Archivist of the United States awards grants recommended by the NHPRC. Publications grants are made for the preparation (compiling, editing and publishing) of printed, microform, and electronic publications. Subvention grants are made to nonprofit presses to help defray publication costs of Commission-supported editions. Records grants are made for activities relating to the preservation, arrangement and description of historical records. Educational programs sponsored by the NHPRC include an institute to provide training in documentary editing and fellowships in the fields of documentary editing and archival administration. The Catalog of Federal Domestic Assistance (CFDA) number for this program is 89.003.

Provisions of the Proposed Rule

In 1991, the publications and records programs of the NHPRC were merged. The proposed rule updates program descriptions and procedures to reflect this internal reorganization. The NHPRC has also been working with the state historical records coordinators and advisory boards to revise their program sections and has made changes accordingly. In addition, we have added language to reflect current guidelines that stipulate prior approval requirements for changes in a grant project once an award has been made, and to mention specifically the archival administration and documentary editing fellowships.

The proposed rule also seeks to clarify Governmentwide requirements for applicants and grantees by including language that specifies the certification

regarding lobbying for grants of $100,000 or more; adds a new section regarding audits, citing OMB Circulars A–128, ''Audits of State and Local Governments,'' and A–133, ''Audits of Institutions of Higher Education and Other Nonprofit Organizations''; and cites OMB Circular A–110, ''Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.''

Finally, the proposed rule revises reporting requirements to reflect reductions in reporting frequency that are being made as part of the President's regulatory reform initiative.

The information collections contained in this proposed rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act. This rule is not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993, and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Part 1206

Grant programs—Archives and records, Grant administration.

For the reasons set forth in the preamble, NARA proposes to amend Part 1206 of Title 36 of the Code of Federal Regulations as follows:

PART 1206—NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

1. The authority citation of part 1206 continues to read as follows:

Authority: 44 U.S.C. 2104(a); 44 U.S.C. 2501–2506.

2. Section 1206.1 is revised to read as follows:

§ 1206.1 Scope of part.

This part prescribes the procedures and rules governing the operation of the grant program of the National Historical Publications and Records Commission.

3. Section 1206.2 is amended by revising paragraphs (e), (f), and (g) to read as follows:

§ 1206.2 Definitions.

* * * * *

(e) The term *State projects* means records projects directed by organizations operating within and involving records or activities within one State. Records or activities of such projects will typically be under the administrative control of the organization applying for the grant. The records or activities need not relate to the history of the State.

(f) The term *regional projects* means records projects involving records or activities in more than one State in a region. Regional projects include those undertaken by regional archival groups or consortia.

(g) The term *national projects* means records projects involving records or activities in several regions or in widely separated States. In general, the location of the records and/or the site of grant-funded activities will determine the category of submission.

4. Section 1206.6 is revised to read as follows:

§ 1206.6 The Commission's Grant Program.

The Commission operates primarily through a grant program supporting publications projects (subpart B) and records projects (subpart C). Fellowships for individuals in archival administration and documentary editing are also offered, as well as an annual institute for the editing of historical documents.

5. Section 1206.7 is added to subpart A to read as follows:

§ 1206.7 Organization.

The Executive Director, Program Director, and the staff of the Commission administer the publications and records grants, fellowships, and institute under the guidance of the Commission and the immediate administrative direction of its chairman, the Archivist of the United States.

6. Section 1206.10 is revised to read as follows:

§ 1206.10 General.

This subpart describes the scope, purpose, and operation of that part of the grant program relating to publications projects and prescribes requirements applicable to printed, microform, and electronic publication projects. Grant application and administration procedures are given in subpart D of this part.

7. Section 1206.12 is revised to read as follows:

§ 1206.12 Scope and purpose.

Publications projects are intended to ensure the dissemination and accessibility of documentary source material important to the study and understanding of U.S. history. Projects should therefore be based upon material of widespread interest among scholars, students, and informed citizens. Documents should have historical value and interest that transcend local and State boundaries.

§ 1206.14 [Removed]

8. Section 1206.14 is removed.

9. Section 1206.16 is revised to read as follows:

§ 1206.16 Project requirements.

(a) Each publications project shall include either the papers of a U.S. leader in a significant phase of life in the United States or documents relating to some outstanding event or to some topic or theme of national significance in U.S. history. These projects shall consist of collecting, compiling, editing, and publishing, either selectively or comprehensively, the papers or documents. Publication may be in the form of printed, microform, or electronic editions. Electronic formats for publication of documentary sources will be considered only when suitable preservation of the data can be assured. Three copies of each book publication should be deposited with the National Historical Publications and Records Commission (NHPRC), Washington, DC 20408. These copies may be included as part of the five complimentary copies to be sent by presses receiving subvention grants.

(b) For microform projects, the grantee shall make positive prints and all finding aids available to institutions, scholars, or students through interlibrary loan and for purchase. Five complimentary copies of guides and indexes produced by the projects shall be sent to the Commission.

10. In § 1206.18, paragraphs (a) and (c) are revised to read as follows:

§ 1206.18 Subsidies for printing costs.

(a) The Commission will consider grant applications from university and other nonprofit presses for the subvention of part of the costs of manufacturing and disseminating volumes that have been formally endorsed by the Commission. Grants not exceeding $10,000 per volume ($3,000 for reprints) are awarded upon recommendation of the Commission to promote the availability of Commission-supported documentary editions.

* * * * *

(c) The Commission shall receive five complimentary copies of each published volume for which a subvention grant is made.

11. Section 1206.20 is revised to read as follows:

§ 1206.20 Microform publication standards.

Technical standards for NHPRC-sponsored microform projects are stated in the brochure ''National Historical Publications and Records Commission: Microform Guidelines,'' which will be

supplied to applicants upon request and to grantee institutions at the time a grant is made for a microform project.

12. Section § 1206.30 is revised to read as follows:

§ 1206.30 General.

This subpart describes the scope, purpose, and operation of that part of the grant program relating to records projects. Grant application and administration procedures are given in subpart D of this part.

13. Section 1206.32 is revised to read as follows:

§ 1206.32 Scope and purpose.

Through its support for records projects, the National Historical Publications and Records Commission encourages a greater effort at all levels of government and by private organizations to preserve and make available for use those records, generated in every facet of life, that further an understanding and appreciation of U.S. history. In the public sector, these historical records document significant activities of State, county, municipal, and other units of government. In the private sector, historical records include manuscripts, personal papers, and family or corporate archives that are maintained by a variety of general repositories as well as materials in special collections relating to particular fields of study, including the arts, business, education, ethnic and minority groups, immigration, labor, politics, professional services, religion, science, urban affairs, and women. In addition to recommending the supporting of projects relating directly to a body of records, the Commission may also recommend support for projects to advance the state of the art, to promote cooperative efforts among institutions and organizations, and to improve the knowledge, performance, and professional skills of those who work with historical records.

§ 1206.34 [Removed]

14. Section 1206.34 is removed.

15. Section 1206.36 is revised to read as follows:

§ 1206.36 State historical records coordinator.

(a) The governor of each State desiring to participate fully in the program shall appoint a State historical records coordinator (coordinator), who shall be the full-time professional official in charge of the State archival program or agency. If the State has another state-funded historical agency or agencies, the official(s) in charge shall be a member of the State historical records advisory board (board). The coordinator is appointed to a minimum four-year term, but may continue to serve until replaced by the governor or until resignation. The coordinator shall serve as chair of the board and shall be the central coordinating officer for the historical records grant program in the State. The person appointed will not be deemed to be an official or employee of the Federal Government and will receive no Federal compensation for such service. The pamphlet ''Guidelines for State Historical Records Coordinators and State Historical Records Advisory Boards,'' which is available from the Commission and from State historical records coordinators, provides further information on the role of the coordinator.

(b) In the event of the resignation of the coordinator or other inability to serve, a deputy coordinator, if one has been designated, will serve as acting State coordinator until the governor makes an appointment. In the absence of a deputy coordinator, the NHPRC will recognize an acting coordinator, selected by the state board, who shall serve until the governor appoints a coordinator in order to conduct the necessary business of the board.

16. Section 1206.38 is revised to read as follows:

§ 1206.38 State historical records advisory board.

(a) Each State desiring to participate in the program shall define an appointment process and appoint a State historical records advisory board consisting of at least seven members, including the State historical records coordinator, who chairs the board. The coordinator shall provide the Commission with a description of the appointment process. A majority of the members shall have recognized experience in the administration of government records, historical records, or archives. The board should be as broadly representative as possible of the public and private archives, records offices, and research institutions and organizations in the State. Board members will not be deemed to be officials or employees of the Federal Government and will receive no Federal compensation for their service on the board. They are appointed for three years with the possibility of renewal; and preferably terms are staggered so that one-third of the board is newly appointed or reappointed each year. If the board is not established in State law, members' terms continue until replacements are appointed. The board may adopt standards for attendance and may declare membership positions open if those standards are not met.

(b) The board is the central advisory body for historical records planning and for Commission-funded projects developed and carried out within the State. The board serves as a coordinating body to facilitate cooperation among historical records repositories and other information agencies within the state and as a state-level review body for grant proposals as defined in the Commission's guidelines. Specifically, the board may perform such duties as sponsoring and publishing surveys of the conditions and needs of historical records in the State; soliciting or developing proposals for projects to be carried out in the State with NHPRC grants; reviewing proposals by institutions in the State and making recommendations about these to the Commission; developing, revising, and submitting to the Commission State priorities for historical records projects following guidelines developed by the Commission; promoting an understanding of the role and value of historical records; acting in an advisory capacity to the state archives and other statewide archival or records agencies; and reviewing, through reports and otherwise, the operation and progress of projects in the State financed by NHPRC grants.

17. In § 1206.50, paragraph (c) is revised to read as follows:

§ 1206.50 Types of grants.

* * * * *

(c) *Matching grants.* An application for a matching grant should be made when an applicant has prospects of securing financial support from a third party or, in the case of a State or local government agency, new funds from the institution's own appropriation source are provided expressly for the project proposed in the application. Upon Commission approval of a matching grant request, the applicant shall present written documentation certifying that matching funds have been provided for the project by the non-Federal source. In the case of a State or local government agency, the matching requirement may also be met through matching funds from the State or local government, provided that it can be demonstrated to the Commission's satisfaction that the matching amount has been provided above and beyond funds previously allocated or planned for the agency's budget and that the funds are set aside exclusively to support the project proposed for an NHPRC grant. Applicants need not, however, have

money in hand to make a matching grant request; they need only assure the Commission that they have reasonable prospects of obtaining the needed amounts.

* * * * *

18. Section 1206.52 is revised to read as follows:

§ 1206.52 Grant limitations.

Grant limitations are described in the grant program guidelines pamphlet, available on request from the Commission.

19. Section 1206.54 is revised to read as follows:

§ 1206.54 Who may apply.

The Commission will consider applications from State and local government agencies, nonprofit organizations and institutions, Federally acknowledged or state-recognized Native American tribes or groups, and, under certain conditions, from individuals. Proposals for State projects falling under the Commission's goals, ''To Assure the Preservation of the Nation's Documentary Heritage through State Collaborative Efforts'' and ''To Achieve Progress in the Preservation and Use of Original Source Material,'' as defined in the grant program guidelines, will be accepted only from applicants in States in which a State historical records coordinator and a State historical records advisory board are currently appointed. This requirement does not apply to regional or national projects.

20. Section 1206.56 is revised to read as follows:

§ 1206.56 When to apply.

Grant proposals are considered during Commission meetings held three times during the year. For current application deadlines contact the grant program staff or State historical records coordinators (for records grant proposals). Some State boards have established pre-submission review deadlines for records proposals; further information is available from State coordinators.

21. In § 1206.58, paragraphs (b), (c), and (d) are revised to read as follows:

§ 1206.58 How to apply.

* * * * *

(b) *Application forms.* Applicants for NHPRC grants shall use Standard Form 424, Application for Federal Assistance, and NA Form 17001, Budget Form (OMB Control Number 3095–0004). Applicants for subvention grants also submit the NHPRC subvention grant application (OMB Control Number 3095–0021), and applicants for archival administration fellowship host institution grants submit a special application (OMB Control Number 3095–0015). Applicants for NHPRC-sponsored fellowships complete the appropriate fellowship application. Copies of these applications and forms are available from the Commission. Project proposals and related correspondence should be sent to the National Historical Publications and Records Commission (NHPRC), Washington, DC 20408.

(c) *Assurances and certifications.* All grant applications to the Commission must include the following assurances and certifications signed by an authorized representative of the applicant institution, or in the case of an individual applicant, by that individual: Standard Form 424B, Assurances: Non-Construction Programs; the Certification Regarding Debarment, Suspension, and Other Responsibility Matters specified in part 1209, appendix B; the Certification Regarding Drug-free Workplace Requirements specified in part 1209, appendix C, of this chapter; and, if the application requests more than $100,000 in Federal funds, a signed Certification for Grants, Loans, or Cooperative Agreements in Excess of $100,000 (certification regarding lobbying). Assurance and certification language is included in the program pamphlet.

(d) *Program guidelines pamphlet.* Supplementary information for applicants is contained in the pamphlet, ''Program Guidelines: Applications and Grants,'' which is available from the Commission upon request. The pamphlet is also available from State historical records coordinators. This pamphlet includes copies of the application form and certifications, guidelines on the preparation of project budgets and program narrative statements, and other guidance on applying for and administering NHPRC grants. OMB Control Number 3095–0013 has been assigned to this information collection.

22. In § 1206.66, paragraphs (b) and (c) are revised to read as follows:

§ 1206.66 Review and evaluation of grant proposals.

* * * * *

(b) *Publications grant proposals.* The Commission staff reviews publications grant proposals for completeness, conformity with application requirements, and relevance to the objectives of the grant program. Proposals are sent to specialists in American history and documentary editing for review and recommendations. The recommendations are considered by the full Commission at regular meetings.

(c) *Subvention grant applications.* The Commission staff reviews subvention grant applications to ensure their adherence to established technical standards for the production of printed volumes, particularly in the quality of paper and ink. Staff recommendations are considered by the full Commission at regular meetings.

23. Section 1206.68 is revised to read as follows:

§ 1206.68 Grant administration responsibilities.

Primary responsibility for the administration of grants is shared by the grantee institution and the project director designated by the institution. In the case of grants made to individuals, the individual named as project director has primary responsibility for the administration of the grant. Grants shall be administered in conformance with either OMB Circular A–110, ''Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations'' (available from the Commission office by writing to NHPRC, National Archives and Records Administration, Washington,DC 20408, or OMB by writing to the Executive Office of the President, Publications Service, 725 17th Street NW, Suite G2200, Washington, DC 20503) or, in the case of State and local governments, with the regulations in part 1207 of this chapter. All grants shall be in conformance with part 1209 of this chapter.

(a) *Changes in the grant project:*

(1) *Extension of the grant period.* Requests for extension of the grant period must be made before the end of the grant period and must be signed by the grantee institution's authorized representative as indicated on the grant application form (SF 424). No extensions will be allowed unless grantees are up-to-date in their submission of financial and narrative reports.

(2) *Rebudgeting.* To meet unanticipated program needs, grantees may adjust the amounts allocated to existing budget lines for both grant funds and cost sharing and may transfer grant funds among existing NHPRC-funded direct cost categories that appear in the final project budget approved by the Commission at the time of the grant award. Cost-sharing funds may also be shifted among existing cost-sharing categories. For grants where the NHPRC's award is less than $100,000, grantees may make these transfers without NHPRC approval. When

Commission grant awards are for $100,000 or more, grantees must obtain prior approval from the NHPRC when cumulative transfers among direct cost categories total more than 10 percent of the total project budget (i.e., grant funds plus other funds). In addition, the Program Director of the Commission may approve the use of NHPRC grant funds for new cost categories for which Commission funds were not provided in the final approved budget where such action seems appropriate for the fulfillment of the original purposes of the grant and where the amount of funds involved does not exceed 10 percent of the amount of the award or $5,000, whichever is less. Requests to establish these new cost categories must be made in writing and signed by the grantee institution's authorized representative. Requests that exceed this limit are subject to approval by the full Commission.

(3) *Other changes requiring prior approval.* Prior written approval from the Commission must be obtained for financial or programmatic changes in all cases involving the following: revision of the scope or objectives of the project; change of the project director or other key project personnel who have been specifically named in the grant application or award or related correspondence; and, contracting out, subgranting, or otherwise obtaining the services of a third party to perform activities central to the purposes of the grant, unless specified in the grant proposal.

(b) *Submission of requests for changes.* All requests for approval of budget or programmatic changes must be submitted in the form of a letter signed by the grantee institution's authorized representative for the grant and addressed to the Program Director. A written response signed by the Program Director of the Commission will constitute approval for the changes.

24. Section 1206.78 is revised to read as follows:

§ 1206.78 Grant reports.

(a) Financial status reports and narrative progress reports are required for all grants. Standard Form 269, Financial Status Report, shall be used for all financial reports. The pamphlet, ''Program Guidelines: Applications and Grants,'' which is provided to each grantee and is available from the Commission on request, specifies the content of the narrative progress reports.

(b) Financial reports are due annually 30 days after the end of each reporting period. Narrative progress reports are due 30 days after the end of each six-month period. Final financial and narrative reports are due within 90 days after the expiration or termination of the grant period. Grants with a duration of six months or less require a final report only. Additional rules on financial and performance reports are found in OMB Circular A–110 and §§ 1207.40 and 1207.41 of this chapter, as appropriate.

25. Section 1206.79 is added to read as follows:

§ 1206.79 Audits.

Grantees are responsible for obtaining audits in accordance with either the Single Audit Act of 1984 (31 U.S.C. 7501–7), for which audit requirements have been set forth in Office of Management and Budget (OMB) Circular A–128, ''Audits of State and Local Governments,'' or requirements established under OMB Circular A–133, ''Audits of Institutions of Higher Education and Other Nonprofit Organizations,'' as appropriate. Copies are available from the Commission office or from OMB at the addresses given in § 1206.68 of this part. The grantee is responsible for ensuring that the NHPRC receives a copy of the audit report for any audit performed during the grant period or for three years thereafter. A reasonable portion of grant funds, as defined in the OMB Circular, may be used to comply with audit requirements. The Commission prefers that the grantee assume such costs as institutional cost sharing.

26. Section 1206.94 is revised to read as follows:

§ 1206.94 Compliance with Governmentwide requirements.

In addition to the grant application and grant administration requirements outlined in this part 1206, grantees are responsible for complying with applicable Governmentwide requirements contained in OMB Circular A–110 or part 1207 of this chapter, as appropriate, and part 1209 of this chapter.

Dated: August 30, 1995.

John W. Carlin,

Archivist of the United States.

[FR Doc. 95–22267 Filed 9–7–95; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 52–1–7109b, PA 53–1–7110b, PA 55–1–7111b, PA 61–1–7112b, PA 66–1–7113b; FRL–5272–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Source-Specific VOC and NO_X RACT and Synthetic Minor Permit Conditions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires reasonably available control technology (RACT) on eleven major sources and establishes permit conditions to limit one source's emissions to below major source levels. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the technical support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 10, 1995.

ADDRESSES: Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400

Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: July 18, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 95–22135 Filed 9–7–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; FCC 95–282]

Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission has adopted a notice of proposed rulemaking (Notice) inviting comment on proposals to revise the assistance mechanisms contained in the jurisdictional separations rules applicable to Dial Equipment Minutes (''DEM'') weighting and the Universal Service Fund (''USF''). The Commission invited comment on whether DEM weighting should be phased out or, if it is retained, whether it should be merged with the USF or otherwise reformed. The Commission also proposed three basic approaches to revising the USF, by either reforming the current mechanism, which bases assistance on the carriers' reported costs, or introducing a system basing assistance on proxy factors, or allocating the fund among the States, which would design their own distribution programs, according to the Commission's guidelines. The Commission referred the proposals to the Federal-State Joint Board in this proceeding for a recommended decision. In addition, the Commission issued a Notice of Inquiry (''NOI'') seeking comment regarding: the need for further rulemaking to develop a program to reduce the USF in competitive markets through least-cost bidding, and the appropriate long-range treatment of universal service issues.

DATES: Comments are due October 10, 1995; Reply Comments are due November 9, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jon Reel, (202) 418–0834, or Deborah A. Dupont, (202) 418–0873, Common Carrier Bureau, Accounting and Audits Division.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communication Commission's Notice of Proposed Rulemaking in Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, FCC 95–282, CC Docket No. 80–286, adopted and released July 13, 1995. The Commission has made the full text of the Notice of Proposed Rulemaking available for inspection and copying during normal business hours in the Commission's Reference Center, Room 239, 1919 M Street NW., Washington, DC 205543, and will publish it in the FCC Record. The full text of the Notice of Proposed Rulemaking may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, telephone number (202) 857–3800.

Synopsis of Notice of Proposed Rulemaking

In this Notice, the Commission seeks comment on proposed improvements to two subsidies intended to promote universal service at reasonable rates in high-cost, predominantly rural areas: dial equipment minute (''DEM'') weighting,[1] and the Universal Service Fund.[2] Changes in technology, market structure, and regulatory policies prompted the Commission to reevaluate these programs, with particular concern that the programs not act as *de facto* barriers to entry in the emerging competitive local exchange market. Commenters are asked to evaluate the proposals in the light of four basic principles. First, assistance should be targeted to support only those providers or users who need it; second, the programs should promote efficient investment and operation; third, the programs should not impose excessive costs on interstate carriers and ratepayers; and fourth, the rules should not impede competitive entry or disrupt normal market forces. The Commission refers the proposals to the Federal-State Joint Board in this proceeding for a recommended decision, as required by the Communications Act of 1934, as amended.[3]

Proposals for Revision of the DEM Weighting Rules

The Commission's rules for allocating equipment costs between the federal and state jurisdictions divide the cost of local switching equipment based on relative dial equipment minutes, or DEM, of use. LEC study areas with 50,000 or fewer access lines ''weight'' (i.e. multiply) the DEM for their interstate switching costs—thus allocating a higher percentage of their overall switching costs to the interstate jurisdiction—on the theory that smaller LECs, because they cannot take advantage of economies of scale, have higher switching costs. Technological developments, however, may have diminished the importance of switch size to the point where the subsidy should be gradually eliminated, and the Notice requests comment on this option.

If DEM weighting is not eliminated, the Notice requests comment on two possible approaches for its reform. First, the switching costs used for DEM weighting could be combined with the loop costs that determine USF assistance, thereby creating a single, need-based subsidy. Second, if DEM weighting is kept separate from the USF, it could be modified in one or more of the following ways: (1) establish a high-cost test for LECs to qualify for DEM weighting, (2) determine DEM weighting factors on the basis of average local switch size, or (3) keep the existing program, but determine the level of assistance through use of a sliding scale. The Notice requests comment on all these measures, with particular emphasis on whether small LECs actually have higher switching costs per unit of traffic than large LECs.

Proposals for Revision of the Universal Service Fund

The Universal Service Fund was adopted in 1984 to support exchange carriers (''LECs'') in study areas with above-average loop costs.[4] The Notice seeks comment on several approaches for reforming the USF, any of which would be compatible with the use of a high-cost credit system. Distributing USF assistance through high-cost credits—money credited on a

---

[1] *See* 47 CFR 36.125 (1994).

[2] *See* 47 CFR subpart F (1994).

[3] 47 U.S.C. 410(c).

[4] Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, 96 F.C.C. 2d 781 (1984).

subscriber's telephone bill that the subscriber could then assign either to the incumbent LEC or to a competing local carrier—is intended to make the program competitively neutral. The Notice requests comment on (1) whether the existence of local service competition should be prerequisite for distributing assistance through a high-cost credit system, (2) whether eligibility for high-cost assistance should depend upon a carrier's assuming minimum service requirements, (3) how best to distribute assistance to carriers that have not been subject to the Commission's separations rules, and (4) the significance of subscriber need in determining high-cost credits.

Besides requesting comment on a high-cost credit system, the Notice sets forth for comment three primary approaches to reform of the USF. The first of these would modify the USF while continuing to base assistance on carrier's reported costs. If this ''reported costs'' approach is adopted, the Notice proposes, at a minimum, three reforms: (1) require carriers to calculate the costs and number of loops in a study area based on all loops served by affiliated companies in the same state, (2) exclude administrative costs from the loop costs that form the basis for high-cost assistance, and (3) base assistance on the average number of lines in a study area over a year, rather than the number of lines at the end of the year.

In addition to these reforms, the Notice seeks comment on reforming the ''reported costs'' approach by adopting one or more of the following measures: (1) increase the threshold for receiving assistance, (2) reconsider the current rules' distinctions between small and large study areas, (3) eliminate assistance to LECs receiving minimal assistance per line per month, and (4) adopt a permanent indexed cap. The Notice also requests comment on whether to implement the use of high-cost credits in a ''reported costs'' system, and whether to base high-cost assistance on local switching and loop costs combined, thereby combining the DEM weighting and USF programs.

The second primary approach would base assistance not on carriers' reported costs, but instead on objectively ascertainable factors that would serve as proxies for the cost of providing service. Using proxy factors rather than reported costs would encourage recipients to control their costs, and would further the policy of competitive neutrality. The Notice seeks comment on four proxy factors: (1) subscriber density per square mile, (2) average distance from the nearest wire center, (3) terrain, and (4) climate. The Notice also seeks comment on whether it is advisable to incorporate local switching costs into the proxy model, and whether the use of a proxy methodology should be limited to the larger LECs.

The third primary approach would allow State utility commissions significant control over distribution of the USF. The Notice proposes a three-step process. First, proxy factors would be used to determine the amount of high-cost assistance allocated for distribution within each State. Second, within each State, the State utility commission would decide, in accordance with general guidelines adopted by the Commission, the process for allocating the assistance among the carriers serving high-cost areas. Third, the Commission would review the distribution plans filed by the State commissioners. The Commission would prescribe a default mechanism for States that decline to participate in the distribution process.

Notice of Inquiry: Comment Requested Regarding the Need for Further Rulemaking

Market-based Incentives to Reduce the USF Through Least-cost Bidding

The NOI sets out for comment a possible methodology to harness market forces to reduce the size of the USF once competition for local phone service is established. Local service providers would reverse-bid to set the amount of USF assistance, with the lowest bidder setting the level of subsidy per subscriber in an area for all carriers serving that area. To encourage carriers to bid, the winner would receive an additional incentive or bonus, such as a percentage of the savings to the fund. To bid, carriers would have to serve as an essential carrier, or ''carrier of last resort,'' by providing ubiquitous service at a reasonable rate within the specified area.

More generally, the NOI solicits suggestions, information, and analyses regarding the appropriate long-term treatment of universal service issues in the light of rapidly-changing technologies and advances in competitive markets.

Regulatory Flexibility Act

In the Notice the Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because, if the proposals in this proceeding are adopted, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act.[5] Because of the nature of local exchange and access service, the Commission has concluded that LECs, including small LECs, are dominant in their fields of operation and therefore are not ''small entities'' as defined by that act.[6] The Secretary has sent a copy of this Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of that act.[7]

Ordering Clauses

Accordingly, it is ordered that, pursuant to Sections 1, 4(i), 4(j), 403, and 410(c) of the Commissions Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j). 403 and 410(c), notice is hereby given of proposed amendments to Part 36 of the Commission's Rules, 47 CFR Part 36, as described in this Notice of Proposed Rulemaking.

It is further ordered that, pursuant to Section 410(c) of the Communications Act of 1934, 47 U.S.C. § 410(c), the proposals set forth in the Notice of Proposed Rulemaking are hereby referred to the Federal-State Joint Board established in this proceeding for the preparation of a recommended decision.

It is further ordered that, pursuant to Sections 1, 4(i), 4(j), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(1), 154(j), and 403, notice is hereby given of the initiation of a Notice of Inquiry regarding the need for further rulemaking to address the use of a competitive bidding process to establish levels of high cost assistance, and regarding the appropriate long-range treatment of universal service issues.

List of Subjects in 47 CFR Part 36

Communications common carriers, Jurisdictional separations procedures, Reporting and recordkeeping requirements, Telephone, Universal system of accounts.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22292 Filed 9–7–95; 8:45 am]

BILLING CODE 6712–01–M

[5] 5 U.S.C. § 601(3).

[6] *See* MTS and WATS Market Structure, 93 FCC 2d 241, 338–39 (1983).

[7] 5 U.S.C. § 603(a).

47 CFR Part 76

[CS Docket No. 95–143; DA 95–1881]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, through this action, invites comments on its proposal to amend its rules regarding the listing of major television markets, to change the designation of the Pittsburgh, Pennsylvania television market to include the community of Greensburg, Pennsylvania. This action is taken at the request of Cornerstone Television, Inc., licensee of television station WPCB–TV, channel 40, Pittsburgh, Pennsylvania and it is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before October 31, 1995 and reply comments are due on or before November 15, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: William H. Johnson, Cable Services Bureau, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking*, CS Docket 95–143, adopted August 30, 1995 and released September 8, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington, D.C. 20554.

Synopsis of the Notice of Propose Rule Making

1. The Commission, in response to a Petition for Rule Making filed by the petitioner, proposed to amend Section 76.51 of the Rules to add the community of Greensburg to the Pittsburgh television market.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent ''with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete.''

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rule making process, including the comments of interested parties. It appears from the information before the Commission that the television stations licensed to Pittsburgh, Pennsylvania do compete throughout much of the proposed combined market area, and that sufficient evidence has been presented tending to demonstrate commonality between the proposed communities to be added to the market designation and the market as a whole that ''hyphenation'' of the market should be proposed. Moreover, the petitioners' proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market. accordingly, comment is requested on the proposed addition of Greensburg to the Pittsburgh, Pennsylvania television market.

Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this *Notice of Proposed Rule Making*, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Ex Parte

5. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before October 31, 1995, and reply comments on or before November 15, 1995.

All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

7. Accordingly, this action is taken by the Deputy Chief, Cable Services Bureau, pursuant to authority delegated by Section 0.321 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission

William H. Johnson,

Deputy Chief, Cable Services Bureau.

[FR Doc. 95–22246 Filed 9–7–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 225

Defense Federal Acquisition Regulation Supplement; Applicability of Trade Agreements

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to provide that the value of an acquisition for purposes of determining the applicability of both NAFTA and the Trade Agreements Act is the total estimated value of all end products subject to the acts.

DATES: *Comment Date:* Comments on the proposed rule should be submitted in writing to the address below on or before November 7, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D022 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends language in the Defense Federal Acquisition Regulation Supplement (DFARS) to change the valuation basis for the purpose of meeting thresholds under the North American Free Trade Agreement (NAFTA) and the Trade Agreements Act (TAA) to the estimated combined value of all line items subject to the acts, rather than valuing each line item separately. The purpose of the change is to comply with the requirements of NAFTA. For consistency, since all acquisitions subject to the Trade Agreements Act are also subject to NAFTA, this valuation method is made applicable to the Trade Agreements Act threshold as well.

B. Regulatory Flexibility Act

The proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule changes the valuation method used by contracting officers to determine whether a procurement is subject to a trade agreement. The proposed rule will not diminish existing preferences for small businesses because purchases under small and small disadvantaged business preference programs are exempted from the trade agreements. An initial Regulatory Flexibility Analysis has been prepared and may be obtained from the address stated herein. Comments are invited from small businesses and other interested parties. Comments form small entities concerning the affected subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D022 in correspondence.

C. Paperwork Reduction Act

This rule does not impose any additional information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is proposed to be amended as follows:

PART 225—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 225.402 is amended by revising paragraph (a) to read as follows:

225.402 Policy.

(a) To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (see 225.403–70).

(1) See 225.105 for evaluation of eligible products and U.S. made end products.

* * * * *

[FR Doc. 95–22167 Filed 9–7–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 670

[Docket No. 950825218–5218–01; I.D. 073195A]

RIN 0648–AE47

Coral Reef Resources of Puerto Rico and the U.S. Virgin Islands; Initial Regulations

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands (FMP). This rule proposes restrictions on the taking of coral reef resources in or from the exclusive economic zone (EEZ) around Puerto Rico and the U.S. Virgin Islands. NMFS, based on a preliminary evaluation of the FMP, has disapproved two measures involving the adoption of state permit and reporting requirements because the state permit systems are not yet fully developed, and the state regulations authorizing these permits, where they exist, do not satisfy the requirements of the Administrative Procedure Act, the Magnuson Fishery Conservation and Management Act (Magnuson Act), and other applicable laws. The proposed rule would implement the remaining measures in the FMP. The intended effect is to protect important marine resources.

DATES: Written comments must be received on or before October 16, 1995.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the FMP, which includes a regulatory impact review and an environmental impact statement, should be sent to the Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918-2577.

Comments regarding the collection-of-information requirement contained in this proposed rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

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

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Caribbean Fishery Management Council (Council) under the authority of the Magnuson Act.

Background

The FMP addresses corals and reef-associated plants and invertebrates (coral reef resources) in the waters of the Commonwealth of Puerto Rico and the Territory of the U.S. Virgin Islands (states) and the waters of the adjoining EEZ. The proposed regulations would govern conservation and management of coral reef resources in or from the adjoining EEZ. The FMP was developed to address general concern for the effects of man's activities on coral reef resources, including pollution resulting from coastal development, and the new and rapidly expanding fishery for the marine aquarium industry, especially in Puerto Rico.

The waters off Puerto Rico could become the principal source of live coral reef resources for the U.S. marine aquarium market, because other areas of the Caribbean and Florida have restricted commercial harvest operations by gear regulations and some quotas. The Council is concerned about the potential impacts of the aquarium

fishery on targeted organisms and the reef habitat where they are collected, because of increasing demand and current harvesting methods, including the use of chemicals and the removal of substrate.

The Council has noted the current rate of degradation of coral reef resources, their limited distribution and the consequent potential for overexploitation, and the growing demand for reef-associated invertebrates for aquariums. The FMP, in association with corresponding state laws, is expected to provide consistent protection for coral reef resources throughout the U.S. Caribbean.

The FMP proposes to: (1) Prohibit the use of chemicals, plants, plant-derived toxins, and explosives to take coral reef resources in the EEZ; (2) limit allowable harvest in the EEZ to dip nets and slurp guns or by hand; and (3) prohibit the possession or sale of stony corals, gorgonians, and live rock (prohibited species) taken from the EEZ.

Additionally, the FMP proposes the adoption of state permit systems for harvesters and dealers of coral reef resources and for the taking of prohibited species for scientific, educational, or restoration purposes. However, these portions of the FMP are being disapproved because the state permit systems for coral reef resources are not yet fully developed and state regulations authorizing such permits, where the regulations exist, do not meet the requirements of the Administrative Procedure Act, the Magnuson Act and other applicable laws, as discussed below.

Gear Restrictions

A ban on the use of chemicals and explosives to take coral reef resources, and the specification of hand-held slurp guns and dip nets as the only allowable gear, are designed to increase survival of targeted species and to protect non-targeted species from incidental mortality. Quinaldine, the most commonly used chemical agent, is a coal tar derivative used in the manufacture of dyes and explosives. Quinaldine anesthetizes reef fish, lobsters, and other invertebrates, and makes them easier to collect, but reportedly also decreases their survival rates and damages surrounding organisms including coral.

The prohibition on the use of a plant or a plant-derived toxin to harvest coral reef resources would eliminate the historical practice of using plants native to the U.S. Caribbean, such as *Sapindus saponarea*, or their products to stun fish. Harvest by hand in a non-habitat destructive manner would ensure that no coral heads, or other reef habitats, are overturned or otherwise disturbed during harvest to allow access to targeted organisms sheltered beneath them. The proposed gear restrictions are not expected to adversely affect experienced harvesters of coral reef resources. The restrictions are designed to allow the harvest of these species without bycatch or increased capture mortality.

Protected Species

Current scientific research indicates that corals and live rock are relatively slow-growing and may be considered nonrenewable fishery resources. Although certain of the soft coral species, such as gorgonians, are faster-growing, the Council determined that there are insufficient data on growth and replacement rates to propose safe harvest levels for these species. Consequently, the FMP proposes a prohibition on taking: (1) Stony coral, which includes fire corals, hydrocorals, and black corals; (2) gorgonians, including sea fans; and (3) live rock, except when such taking can be authorized for scientific, educational, or restoration purposes. Live rock means coral reef resources attached to a hard substrate, including dead coral or rock. Live rock is collected by scuba divers and sold to the marine aquarium industry for use in minireef tanks. NMFS will continue to monitor relevant scientific data and will revisit the issue if and when the data show that these corals may be sustainably harvested.

Current harvest of stony coral in the U.S. Caribbean appears to be negligible. However, pressure to exploit gorgonians and live rock is expected to grow rapidly as market demand for live marine invertebrates increases and as regulations elsewhere (e.g., Florida) become increasingly restrictive. In Puerto Rico, about 40 individuals harvest live fish and invertebrates for the aquarium trade. About 25 percent of the exports, by number, are invertebrates, especially anemones and starfish. Less than 4 percent is live rock or corals. The wholesale (exvessel) value of the approximately 45,500 live coral reef resources reported exported annually is about $114,000; therefore, the reported export of stony corals, gorgonians, and live rock is valued at less than $5,000 annually.

Restriction on Sale

Since harvest of prohibited species would be allowed only for a scientific, educational, or restoration purpose, sale of prohibited species in or from the EEZ would not be allowed. Harvest of these species in state waters is also prohibited. To put a limitation on sale into effect, it is necessary to be able to distinguish between prohibited species from the EEZ or adjoining state waters and prohibited species harvested elsewhere and imported for sale in Puerto Rico or the U.S. Virgin Islands. Such distinction cannot be made by appearance or test. Accordingly, the FMP proposes that a species prohibited for sale in Puerto Rico or the U.S. Virgin Islands will be presumed to have been harvested from the EEZ or from adjoining state waters unless it is accompanied by documentation showing that it was harvested elsewhere.

The proposed documentation of having been harvested elsewhere would consist of (1) information specified in 50 CFR Part 246 for marking containers or packages of organisms that are imported, exported, or transported in interstate commerce; (2) the name and home port of the vessel or the name and address of the individual harvesting the prohibited species; (3) the date and port of landing of the species; and (4) a statement signed by the person holding the prohibited species for sale attesting that, to the best of his or her knowledge, information and belief, the species was harvested from an area other than the EEZ or adjoining state waters. If approved, the requirement for documentation of prohibited species that were harvested elsewhere would become effective approximately 3 months after publication of the final rule implementing the FMP. Thus, dealers would have a period during which they could sell existing stocks or obtain the required documentation.

Permit Requirements/Partial Disapproval of the FMP

Because most of the fishery for coral reef resources occurs in state waters, the FMP anticipates that permits for harvesters and dealers, and permits exempting certain activities for scientific, educational, or restoration purposes, in or from the EEZ, would be issued by state agencies. For example, a harvest permit currently required by each state for its waters would be valid for the harvest of coral reef resources from the adjoining EEZ. State permit requirements would encompass all species in the approved Federal management unit.

On August 9, 1995, the Regional Director, Southeast Region, NMFS (Regional Director), disapproved the permit and reporting requirements contained in the FMP, because the state permit systems on which the FMP permit provisions depend cannot satisfy the requirements of the Magnuson Act

and other applicable law. Puerto Rico has no harvest permit requirement for coral reef resources. The U.S. Virgin Islands has a system for reporting catch, but it does not currently include all the species in the Federal management unit. A dealer's permit is not currently required in either state.

The FMP suggests that the state permit and reporting procedures could provide additional information on landings, gear, capture mortality, and trade, but it does not appear that current state systems could provide this information. In addition, the FMP envisions that state permit systems can provide exceptions to certain gear restrictions and the taking of prohibited species for scientific, educational, or restoration purposes. However, research permit provisions of state regulations are largely discretionary, and the FMP does not provide details of application requirements, conditions, and criteria for issuance that could allow for meaningful public comment. Also, any state authorities that apply in the EEZ would have to be consistent with the Magnuson Act and other applicable law. These determinations cannot be made until complete state systems are in effect.

Since the most easily accessible reef formations are found in state waters, it is unlikely that any significant number of requests will need to be made for activities in the EEZ for scientific, educational, or restoration purposes. Consequently, the proposed rule merely provides a mechanism to authorize such exceptions on a case-by-case basis should the need arise. Such authorizations would not relieve individuals of the obligation to comply with other legal or regulatory requirements, such as those that may apply in a national marine sanctuary. (See § 670.24.)

When the state permit and reporting systems for coral reef resources are fully developed and sufficient detail on their operations is available, the Council may resubmit these disapproved provisions, incorporating the state permit systems by an amendment to the FMP.

Additional background and rationale for the measures discussed above are contained in the FMP, the availability of which was announced in the **Federal Register** on August 8, 1995, (60 FR 40340).

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a council within 15 days of receipt of an FMP and implementing regulations. At this time NMFS has not determined that the FMP is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws, except for those parts of the FMP specifically disapproved, as discussed above. NMFS, in making that determination with respect to the remaining parts of the FMP, will take into account the data, views, and comments received during the comment period.

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

The Council prepared a final environmental impact statement (FEIS) for the FMP that will be filed with the Environmental Protection Agency for public review and comment. A notice of its availability for public comment for 30 days will be published in the **Federal Register**. According to the FEIS, the proposed actions would benefit the natural environment by prohibiting activities that damage live bottom habitat areas.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule would restrict the taking of coral reef resources in or from the EEZ of the U.S. Caribbean. There are about 16 small businesses in the U.S. Caribbean which are potentially involved in the collection, sale and export of coral reef resources. These firms employ less than 100 workers in all phases of the business (harvesters, packers, shippers). In addition, to firms involved in the commercial aspects of harvest, there are an estimated 65 businesses which provide recreational diving services. Since the FMP can affect collecting for personal use, there is the chance that these businesses could be marginally affected by the rule. However, of the total of about 81 businesses identified, less than 20 percent are expected to be affected by the proposed rule because the volume of current harvest is quite low.

Since neither the substantial number nor significant impact criteria are expected to be met, a determination has been made that the proposed rule will not result in a significant impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act—namely, documentation of origin of prohibited species that are for sale in Puerto Rico or the U.S. Virgin Islands. This requirement has been submitted to OMB for approval. The public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this reporting burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 670

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

Dated: September 1, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR is proposed to be amended by adding part 670 as follows:

PART 670—CORAL REEF RESOURCES OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Subpart A—General Provisions

Sec.

670.1 Purpose and scope.
670.2 Definitions.
670.3 Relation to other laws.
670.4 Permits. [Reserved]
670.5 Recordkeeping and reporting.
670.6 Vessel identification.
670.7 Prohibitions.
670.8 Facilitation of enforcement.
670.9 Penalties.

Subpart B—Management Measures

670.20 Fishing year.
670.21 Harvest limitations.
670.22 Gear restrictions.
670.23 Restrictions on sale or purchase.
670.24 Specifically authorized activities.

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

Subpart A—General Provisions

§ 670.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands prepared by the Caribbean Fishery Management Council under the Magnuson Act.

(b) This part governs conservation and management of coral reef resources in or from the EEZ around Puerto Rico and the U.S. Virgin Islands. ''EEZ'' in this part refers to the EEZ in those geographical areas, unless the context clearly indicates otherwise.

§ 670.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Coral reef resource means one or more of the following, or a part thereof, whether living or dead:

Sponges—Class Demospongiae

Aphimedon compressa, Erect rope sponge
Chondrilla nucula, Chicken liver sponge
Cynachirella alloclada
Geodia neptuni, Potato sponge
Haliclona sp., Finger sponge
Myriastra sp.
Niphates digitalis, Pink vase sponge
N. erecta, Lavender rope sponge
Spinosella policifera
S. vaginalis
Tethya crypta

Hydrocorals—Class Hydrozoa

Hydroids—Order Hydroida
Fire Corals—Order Milleporina
Millepora sp.
Lace Corals—Order Stylasterina
Stylaster roseus, Rose lace corals

Anthozoans—Class Anthozoa

Soft corals—Order Alcyonacea

Family Anthothelidae
Erythropodium caribaeorum, Encrusting gorgonian
Iciligorgia schrammi, Deepwater sea fan
Family Briareidae
Briareum asbestinum, Corky sea finger
Family Telestacea
Telesto riisei, Telesto

Gorgonians—Order Gorgonacea

Family Gorgoniidae
Gorgonia flabellum, Venus sea fan
G. mariae, Wide-mesh sea fan
G. ventalina, Common sea fan
Pseudopterogorgia acerosa, Sea plume
P. albatrossae
P. americana, Slimy sea plume
P. bipinnata, Bipinnate plume
P. rigida
Pterogorgia anceps, Angular sea whip
P. citrina, Yellow sea whip
Family Plexauridae
Eunicea calyculata, Warty sea rod
E. clavigera
E. fusca, Doughnut sea rod
E. knighti
E. laciniata
E. laxispica
E. mammosa, Swollen-knob
E. succinea, Shelf-knob sea rod
E. touneforti
Muricea atlantica
M. elongata, Orange spiny rod
M. laxa, Delicate spiny rod
M. muricata, Spiny sea fan
M. pinnata, Long spine sea fan
Muriceopsis sp.
M. flavida, Rough sea plume
M. sulphurea
Plexaura flexuosa, Bent sea rod
P. homomalla, Black sea rod
Pseudoplexaura crucis
P. flagellosa
P. porosa, Porous sea rod
P. wagenaari
Plexaurella dichotoma, Slit-pore sea rod
P. fusifera
P. grandiflora
P. grisea
P. nutans, Giant slit-pore
Family Ellisellidae
Ellisella spp., Sea whips

Hard Corals—Order Scleractinia

Family Astrocoeniidae
Stephanocoenia michelinii, Blushing star
Family Pocilloporidae
Madracis decactis, Ten-ray star coral
M. mirabilis, Yellow pencil
Family Acroporidae
Acropora cervicornis, Staghorn coral
A. palmata, Elkhorn coral
A. prolifera, Fused staghorn
Family Agaricidae
Agaricia agaricities, Lettuce leaf coral
A. fragilis, Fragile saucer
A. lamarcki, Lamarck's sheet
A. tenuifolia, Thin leaf lettuce
Leptoseris cucullata, Sunray lettuce
Family Siderastreidae
Siderastrea radians, Lesser starlet
S. siderea, Massive starlet
Family Poritidae
Porites astreoides, Mustard hill coral
P. branneri, Blue crust coral
P. divaricata, Small finger coral
P. porites, Finger coral
Family Faviidae
Cladocora arbuscula, Tube coral
Colpophyllia natans, Boulder coral
Diploria clivosa, Knobby brain coral
D. labyrinthiformis, Grooved brain
D. strigosa, Symmetrical brain
Favia fragum, Golfball coral
Manicina areolata, Rose coral
M. mayori, Tortugas rose coral
Montastrea annularis, Boulder star coral
M. cavernosa, Great star coral
Solenastrea bournoni, Smooth star coral
Family Rhizangiidae
Astrangia solitaria, Dwarf cup coral
Phyllangia americana, Hidden cup coral
Family Meandrinidae
Dendrogyra cylindrus, Pillar coral
Dichocoenia stellaris, Pancake star
D. stokesi, Elliptical star
Meandrina meandrites, Maze coral
Family Mussidae
Isophyllastrea rigida, Rough star coral
Isophyllia sinuosa, Sinuous cactus
Mussa angulosa, Large flower coral
Mycetophyllia aliciae, Thin fungus coral
M. danae, Fat fungus coral
M. ferox, Grooved fungus
M. lamarckiana, Fungus coral
Scolymia cubensis, Artichoke coral
S. lacera, Solitary disk
Family Caryophyllidae
Eusmilia fastigiata, Flower coral
Tubastrea aurea, Cup coral
Family Oculinidae
Oculina diffusa, Ivory bush coral

Black Corals—Order Antipatharia

Antipathes spp., Bushy black coral
Stichopathes spp., Wire coral

Anemones—Order Actiniaria

Aiptasia tagetes, Pale anemone
Bartholomea annulata, Corkscrew anemone
Condylactis gigantea, Giant pink-tipped anemone
Hereractis lucida, Knobby anemone
Lebrunia spp., Staghorn anemone
Stichodactyla helianthus, Sun anemone
Colonial Anemones—Order Zoanthidea
Zoanthus spp., Sea mat
False Corals—Order Corallimorpharia
Ricordia florida, Florida false coral
Discosoma spp. (formerly *Rhodactis*), false coral

Polychaetes—Class Polychaeta

Family Sabellidae, Feather duster worms
Sabellastarte spp., Tube worms
S. magnifica, Magnificent duster
Family Serpulidae
Spirobranchus giganteus, Christmas tree worm

Gastropods—Class Gastropoda

Family Strombidae, Winged conchs
Strombus spp. (except Queen conch, *S. gigas*)
Family Ovulidae
Cyphoma gibbosum, Flamingo tongue
Charonia tritonis, Atlantic triton trumpet
Family Olividae
Oliva reticularis, Netted olive
Family Elysiidae
Tridachia crispata, Lettuce sea slug

Bivalves—Class Bivalvia

Family Limidae
Lima spp., Fileclams
L. scabra, Rough fileclam
Family Spondylidae
Spondylus americanus, Atlantic thorny oyster

Cephalopods—Class Cephalopoda

Octopuses—Order Octopoda
Family Octopodidae
Octopus spp. (except the Common octopus, *O. vulgaris*)

Crustaceans—Class Crustacea

Decapods—Order Decapoda
Family Stenopodidae, Coral shrimp
Stenopus hispidus, Banded shrimp
S. scutellatus, Golden shrimp
Family Hippolytidae
Lysmata spp., Peppermint shrimp
Thor amboinensis, Anemone shrimp
Family Palaemonida
Periclimenes spp., Cleaner shrimp
Family Alpheidae
Alpheaus armatus, Snapping shrimp
Family Diogenidae
Paguristes spp., Hermit crabs
P. cadenati, Red reef hermit
Family Majidae, Coral crabs
Mithrax spp., Clinging crabs
M. cinctimanus, Banded clinging
M. sculptus,, Green clinging
Stenorhynchus seticornis, Yellowline arrow
Family Grapsidae
Percnon gibbesi, Nimble spray crab
Family Squillidae, Mantis crabs
Gonodactylus spp.
Lysiosquilla spp.

Bryozoans—Phylum Bryozoa

Starfish—Class Stelleroidea

Analcidometra armata, Swimming crinoid
Astropecten spp., Sand stars
Astrophyton muricatum, Giant basket star
Davidaster spp., Crinoids
Linckia guildingii, Common comet star
Nemaster spp., Crinoids
Ophidiaster guildingii, Comet star
Ophiocoma spp., Brittlestars
Ophioderma spp., Brittlestars
O. rubicundum, Ruby brittlestar
Oreaster reticulatus, Cushion sea star

Sea Urchins—Class Echinoidea

Diadema antillarum, Long-spined urchin
Echinometra spp., Purple urchin
Eucidaris tribuloides, Pencil urchin
Lytechinus spp., Pin cushion urchin
Tripneustes ventricosus, Sea egg

Sea Cucumbers—Class Holothuroidea

Holothuria spp., Sea cucumbers

Tunicates—Subphylum Urochordata

Green Algae—Phylum Chlorophyta

Caulerpa spp., Green grape algae
Halimeda spp., Watercress algae
Penicillus spp., Neptune's brush
Udotea spp., Mermaid's fan
Ventricaria ventricosa, Sea pearls

Red Algae—Phylum Rhodophyta

Sea grasses—Phylum Angiospermae

Halodule wrightii, Shoal grass
Halophila spp., Sea vines
Ruppia maritima, Widgeon grass
Syringodium filiforme, Manatee grass
Thalassia testudium, Turtle grass

Gorgonian means a coral reef resource of the Class Anthozoa, Subclass Octocorallia, Order Gorgonacea.

Live rock means a coral reef resource attached to a hard substrate, including dead coral or rock (excluding individual mollusk shells).

Prohibited species means a gorgonian, a live rock, or a stony coral, or a part thereof.

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone: 813-570-5301; or a designee.

Science and Research Director means the Science and Research Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305-361-5761; or a designee.

Scientific, educational, or restoration purpose means the objective of gaining knowledge for the benefit of science, humanity, or management of coral reef resources or restoring a disturbed habitat as closely as possible to its original condition.

Stony coral means a coral reef resource—

(1) Of the Class Hydrozoa (fire corals and hydrocorals); or

(2) Of the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals).

§ 670.3 Relation to other laws.

The relation of this part to other laws is set forth in § 620.3 of this chapter.

§ 670.4 Permits. [Reserved]

§ 670.5 Recordkeeping and reporting.

A person possessing a coral reef resource in or from the EEZ is required upon request to make such coral reef resource available for inspection by the Science and Research Director or an authorized officer.

§ 670.6 Vessel identification.

(a) *Official number.* A vessel that fishes for or possesses coral reef resources in or from the EEZ must display its official number—

(1) On the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in length and at least 10 inches (25.4 cm) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of a vessel that fishes for or possesses coral reef resources in or from the EEZ must—

(1) Keep the official number clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material on board obstructs the view of the official number from an enforcement vessel or aircraft.

§ 670.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fail to make a coral reef resource in or from the EEZ available for inspection, as specified in § 670.5.

(b) Falsify or fail to display and maintain vessel identification, as required by § 670.6.

(c) Fish for or possess a prohibited species in or from the EEZ, as specified in § 670.21.

(d) Use an explosive to harvest a coral reef resource in the EEZ or possess dynamite or a similar explosive substance on board a vessel, as specified in § 670.22(a).

(e) Use a chemical, plant, or plant derived toxin to harvest a coral reef resource in the EEZ, as specified in § 670.22(b).

(f) Harvest a coral reef resource in the EEZ other than as specified in § 670.22(c).

(g) Purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell a prohibited species harvested in the EEZ, as specified in § 670.23(a).

(h) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a coral reef resource.

(i) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

§ 670.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 670.9 Penalties.

See § 620.8 of this chapter.

Subpart B—Management Measures

§ 670.20 Fishing year.

The fishing year for coral reef resources begins on January 1 and ends on December 31.

§ 670.21 Harvest limitations.

No person may fish for or possess a prohibited species in or from the EEZ. The taking of a prohibited species in the EEZ as incidental catch will not be considered unlawful possession of a prohibited species provided it is returned immediately to the sea in the general area of fishing.

§ 670.22 Gear restrictions.

(a) An explosive may not be used to harvest a coral reef resource in the EEZ. Dynamite or a similar explosive substance may not be possessed on board a vessel that possesses a coral reef resource in or from the EEZ.

(b) No person may use a chemical, plant, or plant derived toxin to harvest a coral reef resource in the EEZ.

(c) A coral reef resource in the EEZ may be harvested only with a hand-held dip net or slurp gun, or by hand in a manner that does not injure or destroy a coral reef resource or its habitat. For the purposes of § 670.7(f) and this paragraph (c), a hand-held slurp gun is a device that rapidly draws seawater containing fish into a self-contained chamber.

§ 670.23 Restrictions on sale or purchase.

(a) No person may purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell a prohibited species harvested in the EEZ.

(b) A prohibited species that is sold or exchanged, or offered for sale or exchange, in Puerto Rico or the U.S. Virgin Islands will be presumed to have been harvested in the EEZ unless it is accompanied by documentation showing that it was harvested elsewhere. Such documentation must contain:

(1) The information specified in 50 CFR part 246 for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(2) The name and home port of the vessel, or the name and address of the individual, harvesting the prohibited species;

(3) The port and date of landing the prohibited species; and

(4) A statement signed by the person selling or exchanging, or offering for sale or exchange, the prohibited species attesting that, to the best of his or her knowledge, information, and belief, such prohibited species was harvested other than in the EEZ or the waters of Puerto Rico or the U.S. Virgin Islands.

§ 670.24 Specifically authorized activities.

The Regional Director may authorize the harvest and possession of a prohibited species in or from the EEZ for a scientific, educational, or restoration purpose and may authorize activities otherwise prohibited by the regulations in this part for the acquisition of information and data.

[FR Doc. 95–22239 Filed 9–1–95; 5:01 pm]

BILLING CODE 3510–22–F

---

50 CFR Part 675

[Docket No. 950830223–5223–01; I.D. 082395C]

RIN 0648–AE97

Groundfish of the Bering Sea and Aleutian Islands Area; Chinook Salmon Savings Areas

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would implement Amendment 21b to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This amendment proposes to prohibit the use of trawl gear in specified areas of the Bering Sea and Aleutian Islands (BSAI) management area through April 15 of each fishing year once a chinook salmon bycatch of 48,000 fish has been reached in the BSAI management area trawl fisheries. This action is necessary to limit chinook salmon bycatch in the BSAI management area and is intended to promote the goals and objectives of the FMP.

DATES: Comments on the FMP amendment must be received by October 20, 1995.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attention: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendment 21b and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) prepared for Amendment 21b are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907–586–7228.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the BSAI management area is managed by NMFS according to the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act), and is implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 675 and 676. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

This action proposes regulations to implement Amendment 21b to the FMP. If approved by NMFS, this amendment would prohibit the use of trawl gear in specified areas of the BSAI management area that historically contributed to relatively high chinook salmon bycatch rates during winter months.

Chinook salmon are caught incidentally in trawl fisheries in the BSAI management area. They are a prohibited species in the trawl fisheries and must be discarded after being counted by a NMFS-certified observer.

During the foreign fisheries, the estimated chinook salmon bycatch reached a high of 115,000 salmon in 1980. As a result, the foreign fleet was put on a bycatch reduction schedule starting at 65,000 chinook salmon and decreasing to 16,500 chinook by 1986. According to reported bycatch, the foreign fleet did not exceed the reduction schedule bycatch level in any year.

The domestic groundfish trawl fleet has caught the majority of the chinook salmon bycatch since 1987. Chinook salmon bycatch exceeded 20,000 fish in 1987, 1988, and 1989 and exceeded 40,000 fish in 1991, 1992, 1993, and 1994. Estimated chinook salmon bycatch in the domestic trawl fisheries from 1990 to the present is summarized below:

Year	No. of Chinook
1990	13,990
1991	48,821
1992	41,903
1993	45,964
1994	44,437
[1] 1995	17,701

[1] Preliminary through 7/29/95.

Observer data from the foreign, joint-venture, and domestic trawl fisheries for pollock and Pacific cod were examined for seasonal and spacial patterns in chinook salmon bycatch and groundfish catch. The pollock and Pacific cod fisheries were selected because nearly all chinook salmon bycatch occurs in these fisheries (92 percent in 1994). These data showed that chinook salmon bycatch was largely associated with groundfish catches along the 200-m contour (continental shelf break), in the

''horseshoe'' area of the contour, and north of Unimak Island. Chinook salmon bycatch did not extend, for the most part, far from the contour, from the horseshoe, or from north of Unimak Island. In addition, analysis of haul-by-haul observer data showed that chinook salmon bycatch rates were higher in the winter months—from September or October through April.

Analysis of scale patterns, tagging study results, and parasite information indicates that from about 50 percent to over 90 percent of the chinook salmon encountered in the Bering Sea are of Western Alaskan origin. Therefore, chinook salmon bycatch likely reduces the number of chinook salmon available for escapement and subsistence, commercial, and recreational fisheries in Western Alaska and elsewhere.

Salmon fishery managers have been concerned about the health of chinook salmon stocks on the Yukon River, Kuskokwim River, and portions of Bristol Bay, where minimum escapement goals in several systems were not met in the mid- and late-1980's. Although escapement has improved in recent years, these goals are only being met through careful management of directed fisheries by time and area and through gear restrictions.

Chinook salmon is one of the major food items of the Yup'ik Eskimo and Athabaskan Indians of Western and Interior Alaska and plays an important role in supporting the indigenous cultures and mixed, subsistence-cash socioeconomic systems of these peoples. In addition, commercial and recreational fishing provides an important source of income in Western Alaska communities. Further description of the biological, economic, and cultural importance of chinook salmon in Western Alaska is contained in the EA/RIR/IRFA (see **ADDRESSES**).

The Council began developing alternatives for chinook salmon bycatch management in the domestic groundfish trawl fisheries in 1992 under Amendment 21 to the FMP. A draft analysis was released for public review in January 1993. However, in April 1993, the Council decided to separate the chinook salmon bycatch management alternatives; identify them as Amendment 21b; and postpone action to allow public review of a Vessel Incentive Program and industry development of the Salmon Research Foundation. During its June 1993 meeting, the Council voted to endorse the Salmon Research Foundation (SRF), a non-profit corporation that uses income generated from a $20 per chinook salmon assessment to develop a salmon bycatch avoidance program and to fund research on the origin of salmon caught in the trawl fisheries. In 1994, the SRF developed a program to disseminate inseason observer data and other information about individual vessel chinook salmon bycatch to the trawl fleet. The intent of this program was to provide vessel operators timely information to help reduce salmon bycatch rates. The long-term effectiveness of the SRF in reducing chinook salmon bycatch is difficult to evaluate, given the short time it has been in operation.

In June 1993, the Council voted to recommend the issuance of regulations to: (1) Prohibit the discard of salmon until the number of salmon are determined by a NMFS-certified observer, (2) implement data gathering and analysis of bycatch patterns, and (3) require posting on the NMFS bulletin board of salmon bycatch numbers for each vessel. These regulations became effective May 20, 1994 (59 FR 18575, April 20, 1994).

In the meantime, the Council continued to consider additional chinook salmon bycatch management alternatives, including a chinook salmon prohibited species catch (PSC) limit and closures in times or areas of historic high salmon bycatch. PSC limits ranging from 8,000 to 48,000 chinook salmon were analyzed. The lower bound of this range was determined by applying the lowest average annual chinook salmon bycatch rate since 1980 (0.004 salmon per metric ton of groundfish in 1986) to current BSAI management area groundfish harvests. Additional PSC limits analyzed included annual bycatch rates of 0.008 (16,000 salmon), 0.012 (24,000 salmon), and 0.024 (48,000 salmon).

The Council considered nine alternatives or options for area closures once a PSC limit was reached, including the entire BSAI management area, specific Federal statistical areas, a 30 mile-wide (48,280 m) buffer strip along the 200-m contour, and specific ½° lat. by 1° long. blocks. In addition, alternatives or options to close these areas during specific seasons, for specific directed fisheries, or in the absence of a PSC limit also were considered. Chinook Salmon Savings Areas.

At its April 1995 meeting, the Council voted to recommend an FMP amendment that would close three non-contiguous areas of the BSAI management area comprised of nine ½° lat. by 1° long. blocks to all trawling through April 15, once an annual PSC limit of 48,000 chinook salmon was reached. The areas would reopen April 15 for the remainder of the year, regardless of the amount of chinook salmon bycatch. Accounting of chinook salmon towards the bycatch limit would start at the beginning of each fishing year (January 1).

The Chinook Salmon Savings Areas (CHSSA) are:

(1) The area defined by straight lines connecting the following coordinates in the order listed:

56° 30′ N., 171° 00′ W.;
56° 30′ N., 169° 00′ W.;
56° 00′ N., 169° 00′ W.;
56° 00′ N., 171° 00′ W.; and
56° 30′ N., 171° 00′ W.

(2) The area defined by straight lines connecting the following coordinates in the order listed:

54° 00′ N., 171° 00′ W.;
54° 00′ N., 170° 00′ W.;
53° 00′ N., 170° 00′ W.;
53° 00′ N., 171° 00′ W.; and
54° 00′ N., 171° 00′ W.

(3)The area defined by straight lines connecting the following coordinates in the order listed:

56° 00′ N., 165° 00′ W.;
56° 00′ N., 164° 00′ W.;
5° 00′ N., 164° 00′ W.;
55° 00′ N., 165° 00′ W.;
54° 30′ N., 165° 00′ W.;
54° 30′ N., 167° 00′ W.;
55° 00′ N., 167° 00′ W.;
55° 00′ N., 166° 00′ W.;
55° 30′ N., 166° 00′ W.;
55° 30′ N., 165° 00′ W.; and
56° 00′ N., 165° 00′ W.

Data from observed trawl vessels participating in the pollock and Pacific cod fisheries from 1990 through 1993 were used to compare catch and bycatch in the CHSSA and other areas of the BSAI management area. During the high bycatch months of January through April and September through December, the CHSSA represented 52, 66, 64, and 60 percent of the chinook bycatch, and 20, 36, 38, and 49 percent of the total groundfish catch in observed hauls between 1990 and 1993. In other words, the CHSSA represented a larger share of chinook salmon bycatch relative to total groundfish catch. The importance of these areas, in terms of both groundfish catch and chinook salmon bycatch, increased between 1990 and 1993. However, the increase in groundfish catch in the areas was greater than the increase in chinook salmon bycatch over the 4-year period.

Although high chinook salmon bycatch was identified in two seasons (January through April and September through December), through analysis of observer data aggregated by month, the Council recommended a closure only

from January 1 through April 15, because the majority of the chinook salmon bycatch in recent years has been caught between January and April. For example, in 1993, approximately 71 percent of the chinook salmon bycatch by observed trawl vessels in the pollock and Pacific cod fisheries in the CHSSA occurred between January and April.

Since 1990, chinook salmon bycatch between January 1 and April 15 was estimated to be:

Year	No. of Chinook by April 15
1990	11,626
1991	44,234
1992	30,703
1993	23,129
1994	37,967
[1] 1995	17,064

[1] Preliminary through 7/29/95.

Based on historical bycatch estimates, reaching the 48,000 PSC limit or closing the CHSSA in future years is not likely. In selecting this preferred alternative, the Council expressed the view that current levels of chinook salmon bycatch probably did not represent biological harm to Western Alaska chinook salmon stocks. Furthermore, existing groundfish fisheries should not be constrained in order to reduce the current level of chinook salmon bycatch. However, future increases in bycatch in the BSAI management area trawl fisheries need to be limited to prevent detrimental impact on Western Alaska chinook salmon stocks and fisheries.

If bycatch amounts before April 15 of future years exceed amounts caught in recent years, closure of the CHSSA would prevent trawlers from fishing in areas that historically represented from 20 percent to 49 percent of annual groundfish catch. Although other areas of the BSAI management area would continue to be open to trawling, vessels displaced from the CHSSA would likely incur increased operating costs and lower catch per unit effort.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of the FMP amendment and regulations. At this time, NMFS has not determined that the FMP amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. Approximately 107 trawl catcher vessels participate in the BSAI management area groundfish fisheries. Most of these vessels are considered small entities. Closure of the CHSSA is unlikely because the PSC limit is higher than any bycatch estimate for the domestic fisheries. However, the CHSSA represent a large proportion of groundfish catch and many of these catcher vessels are likely to fish in these areas. Therefore, closure of the CHSSA could result in a significant impact on a substantial number of small entities in years of high chinook salmon bycatch. On the other hand, the absence of a mechanism to limit chinook salmon bycatch may adversely impact other small entities that rely on chinook salmon returns to Western Alaska and other areas. A copy of this analysis is available from the Council (see **ADDRESSES**).

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

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: September 1, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 675 is proposed to be amended as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for part 675 continues to read as follows:

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

2. In § 675.22, paragraph (i) is added to read as follows:

§ 675.22 Time and area closures.

* * * * *

(i) *Chinook Salmon Savings Areas.* When the Regional Director determines that 48,000 chinook salmon (*Oncorhynchus tshawytscha*) have been caught by vessels using trawl gear during the time period of January 1 through April 15 in the Bering Sea and Aleutian Islands management area, NMFS will prohibit fishing with trawl gear for the remainder of the period January 1 through April 15 within the following three areas:

(1) The area defined by straight lines connecting the following coordinates in the order listed:

56° 30′ N., 171° 00′ W.;
56° 30′ N., 169° 00′ W.;
56° 00′ N., 169° 00′ W.;
56° 00′ N., 171° 00′ W.; and
56° 30′ N., 171° 00′’ W.

(2) The area defined by straight lines connecting the following coordinates in the order listed:

54° 00′ N., 171° 00′ W.;
54° 00′ N., 170° 00′ W.;
53° 00′ N., 170° 00′ W.;
53° 00′ N., 171° 00′ W.; and
54° 00′ N., 171° 00′ W.

(3) The area defined by straight lines connecting the following coordinates in the order listed:

56° 00′ N., 165° 00′ W.;
56° 00′ N., 164° 00′ W.;
55° 00′ N., 164° 00′ W.;
55° 00′ N., 165° 00′ W.;
54° 30′ N., 165° 00′ W.;
54° 30′ N., 167° 00′ W.;
55° 00′ N., 167° 00′ W.;
55° 00′ N., 166° 00′ W.;
55° 30′ N., 166° 00′ W.;
55° 30′ N., 165° 00′ W.; and
56° 00′ N., 165° 00′ W.

[FR Doc. 95–22285 Filed 9–5–95; 1:16 pm]
BILLING CODE 3510–22–W

Notices

Federal Register

Vol. 60, No. 174

Friday, September 8, 1995

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

Forms Under Review by Office of Management and Budget

August 31, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W, Jamie L. Whitten Bldg., Washington, DC 20250, (202) 690–2118.

New

- Food Safety and Inspection Service

7 CFR Part 59, Eggs and Egg Products Inspection

FSIS–38, FSIS–214, FSIS–222, FSIS–240, FSIS–518–1, FSIS–157, FSIS–100, and FSIS–32

Business or other for-profit; 32,496 responses; 24,582 hours

Lee Puricelli (202) 720–7164

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 95–22280 Filed 9–7–95; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Northwest Sacramento Province Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Province Advisory Committee will meet on September 19 and 20, 1995, for a field trip and meeting. The field trip portion of the meeting will start at 1:00 p.m. September 19, at the Red Bluff Community Center, 1500 South Jackson Street, Red Bluff, CA. The focus of the afternoon field trip will be the Deer Creek Watershed Conservancy. Agenda items will include: (1) An overview on the reasons for initiating the Conservancy organization; (2) Description of current issues and strategies to address those issues; (3) Description of opportunities for enhancement of the Deer Creek Watershed; (4) Overview of elements important to organizational formation, decision making processes, and strategies to help ensure future continuation of the Conservancy. The field trip will return to the Red Bluff Community between 4:30 p.m. and 5:30 p.m. The meeting on September 20, 1995, will begin at 8:00 a.m. at the Red Bluff Community Center. Agenda topics include: (1) Old business from the August '95 meeting; (2) Report on the Interagency Advisory Committee; (3) Report by Sub-communittee for the Timber Salvage Act, (4) Response by Federal agency representatives on key issues related to implementation of the Northwest Record of Decision; (5) Staff reports on Key Issue(s) action items; (6) Development of issue priorities (including the top six issues identified by the Advisory Committee during their May '95 meeting and the key issues identified by Federal agency representatives; (7) Overview on Streamlined Process for Watershed Analysis, (8) Public participation to be available between 3:20 p.m. and 3:50 p.m.; (9) Agenda for next meeting. All Northwest Sacramento Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to David E. Howell, Designated Federal Official, Northwest Sacramento Province, USDI, Bureau of Land Management, 2550 North State Street, Ukiah, CA 95482–3023, (707 468–4000), or Duane Lyon, Province Coordinator, USDA, Shasta Trinity National Forests, 2400 Washington, Redding, CA, 96001 (916–246–5499).

Dated: August 30, 1995.

David E. Howell,

Designated Federal Official, Northwest Sacramento Province.

[FR Doc. 95–22256 Filed 9–7–95; 8:45 am]

BILLING CODE 3410–FK–M

Natural Resources Conservation Service

Rattlesnake Creek Watershed, Ohio

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR 622), the Natural Resources Conservation Service gives notice of the deauthorization of Federal funding for the Rattlesnake Creek Watershed project, Clinton, Fayette, Madison, and Greene Counties, Ohio, effective on July 25, 1995.

FOR FURTHER INFORMATION CONTACT: Lawrence E. Clark, State Conservationist, Natural Resources Conservation Service, 200 North High Street, room 522, Columbus, Ohio 43215, (614) 469–6962.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Office of Management and Budget Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 31, 1995.

Lawrence E. Clark,

State Conservationist, Natural Resources Conservation Service.

[FR Doc. 95–22327 Filed 9–7–95; 8:45 am]

BILLING CODE 3410–16–M

ARCTIC RESEARCH COMMISSION

Meetings

August 31, 1995.

Notice is hereby given that the Arctic research Commission will hold its 40th Meeting in Anchorage, Alaska, on September 25–26, 1995. On Monday, September 25, a Business Session open to the public will convene at 9:00 a.m. on the first floor of the Anchorage Museum of History and Art, 121 W. Seventh Avenue. Agenda items include: (1) Chairman's Report; (2) Agency Reports; (3) SCICEX–95 Presentation; (4) CIFAR Presentation. On Tuesday, September 26, the Business Session will reconvene at 9:00 a.m. Agenda items for this session include: (1) Travellers Reports; (2) Correspondence; (3) New Business; an Executive Session will follow the close of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact person for more information: Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 95–22255 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Annual Trade Survey.

Form Number(s): B–450, B–451.

Agency Approval Number: 0607–0195.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 2,036 hours.

Number of Respondents: 5,200.

Avg Hours Per Response: 23 minutes.

Needs and Uses: The Bureau of the Census conducts the Annual Trade Survey to collect annual sales, purchases, year–end inventory, inventory valuation methods, legal form of organization, cost of goods sold, and gross margin data from a sample of wholesalers who are contained in the Census Bureau's Standard Statistical Establishment List (SSEL). We tabulate the annual wholesale trade data to benchmark data from our Monthly Wholesale Trade Survey. The Bureau of Economic Analysis incorporates the wholesale trade data in its calculations of the gross domestic product. Other government agencies and businesses use the published estimates to gauge the current trends of the economy.

Affected Public: Business or other for–profit.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 1, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–22288 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Boundary and Annexation Survey.

Form Number(s): BAS–1, 1A, 2, 2A, 3, 3A, 4, 33L, 33LM.

Agency Approval Number: 0607–0151.

Type of Request: Revision of a currently approved collection.

Burden: 10,930 hours.

Number of Respondents: 9,870.

Avg Hours Per Response: 1 hour and 7 minutes.

Needs and Uses: The Census Bureau conducts the Boundary and Annexation Survey (BAS) annually to collect information on the creation of newly incorporated municipalities and minor civil divisions (MCDs), the dissolution of incorporated municipalities and MCDs, and changes to the boundaries of counties, incorporated municipalities, and MCDs. The survey provides accurate identification of geographic areas for the decennial and economic censuses and support for the annual population estimates program. It is also used to update the municipal, MCD, and county inventory for the Federal Information Processing Standards (FIPS) program at the U.S. Geological Survey and the National Institute of Standards and Technology. Other Federal Agencies use BAS results in their legislative programs. This request is for a revision only to the universe of respondents to the BAS. We are increasing the number to support the economic and decennial census.

Affected Public: State, local or tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 1, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–22289 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Monthly Wholesale Trade Survey.

Form Number(s): B–310.

Agency Approval Number: 0607–0190.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 6,150 hours.

Number of Respondents: 5,985.

Avg Hours Per Response: 9 and one–half minutes.

Needs and Uses: The Bureau of the Census conducts the Monthly Wholesale Trade Survey to obtain sales and inventory data from a sample of merchant wholesalers. From the data we gather, we produce statistics on wholesale sales, end–of–month inventories, methods of inventory valuation, and stock/sales ratios. The Bureau of Economic Analysis uses these statistics in its calculations of the gross domestic product (GDP) and to improve the reliability of inventory adjustments applied in the quarterly GDP estimates. The Bureau of Labor Statistics uses these statistics as input to its Producer Price Indexes and in developing productivity measurements. Other government agencies and businesses use these statistics for planning and development and to gauge the current trends of the economy. Current data on wholesale trade also enable us to make comparisons with the five–year wholesale census data.

Affected Public: Business or other for–profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 1, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–22290 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Congressional Data User Survey.

Form Number(s): 628, 628(L), 630, 630(L).

Agency Approval Number: 0607–0789.

Type of Request: Revision of a currently approved collection.

Burden: 79 hours.

Number of Respondents: 952.

Avg Hours Per Response: 5 minutes.

Needs and Uses: In October 1993, the Census Bureau, with approval from OMB, surveyed all members of Congress to determine how we can better meet their needs for Census Bureau data. We later obtained OMB clearance to survey all Congressional committees for the same purpose. However, plans for surveying Congressional committees were postponed. The Census Bureau now requests OMB clearance to again survey all current members of Congress and the various committees and subcommittees of Congress. The survey will identify which Congressional members and committees/subcommittees use or do not use our data, how the data are used, which would like a briefing on how to use Census Bureau data, and the medium they prefer, i.e. published reports, CD ROM, internet. We plan to conduct this survey every two years as new members are elected and new committees/subcommittees are formed. This information is needed to determine how the Census Bureau can revise and improve the current program it uses to disseminate data to members and committees/subcommittees of Congress.

Affected Public: Individuals or households.

Frequency: Biannually (every 2 years).

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 1, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–22291 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Business and Professional Classification Report.

Form Number(s): B–625(97).

Agency Approval Number: 0607–0189.

Type of Request: Revision of a currently approved collection.

Burden: 9,101 hours.

Number of Respondents: 42,000.

Avg Hours Per Response: 13 minutes.

Needs and Uses: The Bureau of the Census conducts the Business and Professional Classification Report to collect sales and other information from a sample redrawn every quarter of retail, wholesale, service, and unclassified businesses recently assigned Federal Employer Identification numbers (EIN). We are informed of the existence of these new businesses from lists provided by the Internal Revenue Service and the Social Security Administration. From the information we collect in this survey, we determine an appropriate measure of size, company organization and establishment information, taxable or tax–exempt status, wholesale inventories, type of operation, and assign a new or more refined kind–of–business classification. We use this information to include these businesses in our retail, wholesale, and service surveys. This keeps the sampling frames for our current business surveys up–to–date with the business universe. This request for revision revises the data collection form by removing questions that are no longer needed and simplifying the wording and format of the essential questions.

Affected Public: Businesses or other for–profit, Not–for–profit institutions.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 1, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–22287 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–07–F

Bureau of Export Administration

Joint Meeting of the Computer Systems Technical Advisory Committee Electronics Technical Advisory Committee Telecommunications Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

A joint meeting of the Computer Systems Technical Advisory Committee, the Electronics Technical Advisory Committee, and the Telecommunications Equipment Technical Advisory Committee will be held September 28, 1995, 9 a.m., Herbert C. Hoover Building, room 1617–M2, 14th Street and Pennsylvania Avenue NW., Washington, DC. These Committees advise the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to equipment and technology in the fields of computers, electronics, and telecommunications.

Agenda

General Session

1. Introductions and presentations by the public.
2. Update on technical advisory committee reorganization.
3. Presentation on Asynchronous Transfer Mode (ATM) technology.
4. Discussion on the export control of cryptography.
5. Nomination of candidates for future election of Chairman of joint technical advisory committee meetings.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with U.S. export 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, 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. Lee Ann Carpenter, TAC Unit/OAS/EA, room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees 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 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 these Committees is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: August 31, 1995.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 95–22286 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

Initiation of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping Duty Administrative Reviews of Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate from Various Countries.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of antidumping duty orders on cold-rolled and corrosion resistant carbon steel flat products and certain cut-to-length carbon steel plate from various countries with August anniversary dates. In accordance with the Department's Regulations, we are initiating these administrative reviews.

EFFECTIVE DATE: September 8, 1995.

FOR FURTHER INFORMATION CONTACT: Linda Ludwig or Jean Kemp, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–3833 or 482–4037, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 C.F.R. 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping duty orders with August anniversary dates.

In contrast to the investigation and first administrative review, we are not establishing a lead case for each country, because there are fewer products under antidumping duty orders than were included in the investigation and we believe the normal procedures will be more convenient for analysts and interested parties. Parties should file their submissions under the case numbers for the appropriate country and class or kind of merchandise listed below. In addition, having found them unnecessary and duplicative, the Department is eliminating the General Issue files for this review.

Initiation of Reviews

In accordance with sections 19 C.F.R. 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping duty orders. We intend to issue the final results of these reviews not later than August 31, 1996. The following list consists of administrative reviews requested. However, the Department may determine at a later date to collapse some related parties.

ANTIDUMPING DUTY PROCEEDINGS

List of companies by country	Period to be reviewed
Australia:	
A–602–803 Certain Corrosion-Resistant Carbon Steel Flat Products:	
Broken Hill Proprietary Company, Ltd., A–602–803	08/01/94–07/31/95

ANTIDUMPING DUTY PROCEEDINGS—Continued

List of companies by country	Period to be reviewed
Brazil:	
A–351–817 Certain Cut-to-Length Carbon Steel Plate:	
Companhia Siderurgica de Tubarao (CST), A–351–817	08/01/94–07/31/95
Wirth Ltd.,[1] A–351–817	08/01/94–07/31/95
Canada:	
A–122–822 Certain Corrosion-Resistant Carbon Steel Flat Products:	
Continuous Colour Coat, Ltd., A–122–822	08/01/94–07/31/95
Dofasco Inc. and Sorevco, Inc., A–122–822	08/01/94–07/31/95
Stelco, Inc., A–122–822	08/01/94–07/31/95
A–122–823 Certain Cut-to-Length Carbon Steel Plate	08/01/94–07/31/95
Algoma Steel Inc., A–122–823	08/01/94–07/31/95
Manitoba Rolling Mills, A–122–823	08/01/94–07/31/95
Stelco, Inc., A–122–823	08/01/94–07/31/95
Tideco Industries, A–122–823	08/01/94–07/31/95
Finland:	
A–405–802 Certain Cut-to-Length Carbon Steel Plate:	
Rautaruukki Oy, A–405–802	08/01/94–07/31/95
Germany:	
A–428–814 Certain Cold-Rolled Carbon Steel Flat Products:	
Thyssen Stahl AG and Thyssen, Inc., A–428–814	08/01/94–07/31/95
A–428–816 Certain Cut-to-Length Carbon Steel Plate:	
AG der Dillinger Hüttenwerke, A–428–816	08/01/94–07/31/95
Korea:	
A–580–815 Certain Cold-Rolled Carbon Steel Flat Products:	
Dongbu Steel Co., Ltd., A–580–815	08/01/94–07/31/95
Pohang Iron and Steel Co., Ltd., A–580–815	08/01/94–07/31/95
Union Steel Manufacturing Co., Ltd., A–580–815	08/01/94–07/31/95
A–580–816 Certain Corrosion-Resistant Carbon Steel Flat Products:	
Dongbu Steel Co., Ltd., A–580–816	08/01/94–07/31/95
Pohang Iron and Steel Co., Ltd., A–580–816	08/01/94–07/31/95
Union Steel Manufacturing Co., Ltd., A–580–816	08/01/94–07/31/95
The Netherlands:	
A–421–804 Certain Cold-Rolled Carbon Steel Flat Products:	
Hoogovens Groep BV, A–421–804	08/01/94–07/31/95
Sweden:	
A–401–805 Certain Cut-to-Length Carbon Steel Plate:	
Svenskt Stal AB, A–401–805	08/01/94–07/31/95

[1] For the purpose of determining whether profile slabs produced by CST and imported by Wirth fall within the scope of the antidumping duty order.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 C.F.R. 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 C.F.R. 353.22(c)(1) and 355.22(c)(1).

Dated: September 5, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–22507 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–DS-P

National Oceanic and Atmospheric Administration

Notice to Extend the Time Period for the Area to be Temporarily Avoided by the Public During Coral Rubble and Ship Debris Removal Activities in the Looe Key National Marine Sanctuary, Now Part of the Florida Keys National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of extension of time period.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), the U.S. Army Corps of Engineers (COE), and authorized contractors will be conducting coral rubble and ship debris removal activities to prevent and minimize the destruction, or loss of, or injury to Sanctuary resources. The coral rubble and ship debris were generated as a result of the August 10 to 12, 1994, R/V *Columbus Iselin* grounding incident within the Looe Key National Marine Sanctuary (Looe Key NMS), now part of the Florida Keys National Marine Sanctuary (Florida Keys NMS).

To ensure the protection of life and property during these complex activities the public is advised to avoid the area due to the presence of heavy equipment (i.e., barge and crane) and increased localized boat traffic. NOAA requested on August 25, 1995 (60 FR 44307) that Sanctuary users temporarily avoid an area approximately 900 square feet marked by visible construction buoys from on or about August 23 and August 31, 1995. The area is in the vicinity of 24°37′30″ N, 81°24′23″ W, a bank reef located 7 nautical miles (12.9 km) off the southwest tip of Big Pine Key, Florida.

Due to recent tropical storms and hurricanes in the Greater Caribbean and Florida peninsula, activities to remove

the coral rubble and ship debris have been delayed. This notice extends the request for the public to temporarily avoid the area until September 15, 1995.

FOR FURTHER INFORMATION CONTACT:

Any comments on the establishment of the area to be temporarily avoided may be sent at any time during or after the effective dates specified, to Dr. Charles M. Wahle, Chief, Technical Projects Branch, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 12th Floor, Silver Spring, Maryland, 20910. Telephone number: 301–713–3145 ext. 156.

Locations and Boundaries of Temporary Avoidance Area

The temporary avoidance area is located approximately 7 nautical miles (12.9 kilometers) offshore the southwest tip of Big Pine Key, Florida (24°37′ N, 81° W). The total area to be temporarily avoided is approximately 900 square feet, and is less than one percent of the total area of the Looe Key NMS. The boundary of this area will be marked by visible construction buoys.

The area to be temporarily avoided is bounded by the following coordinates:

Latitude	*Longitude*
A. 24°32′49.5″ N	81°24′25.6″ W
B. 24°32′49.5″ N	81°24′22.4″ W
C. 24°32′25.3″ N	81°24′22.4″ W
D. 24°32′25.3″ N	81°24′25.6″ W

Dates

The area to be temporarily avoided will be in effect until September 15, 1995, or until the construction marker buoys are removed at NOAA's direction if the work is completed prior to September 15, 1995. Public notice of the area to be temporarily avoided will be provided through the **Federal Register**, local news media, and posting of placards on bulletin boards in public areas in Big Pine Key and at Bahia Honda State Park.

Notice of the removal of the area to be temporarily avoided will be issued by NOAA once the rubble and ship debris removal activities are completed.

Dated: September 1, 1995.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–22248 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 9, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.

2. The action will result in authorizing small entities to furnish the commodity and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Basin, Wash
6530–01–166–9035
NPA: The Arc of St. Clair County, Port Huron, Michigan

Service

Janitorial/Custodial
Morgantown U.S. Army Reserve Center
Route 19 South, Comfort Inn Drive, Morgantown, West Virginia
NPA: PACE Training & Evaluation Center, Inc., Star City, West Virginia

E. R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–22362 Filed 9–7–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to and Deletions from Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 9, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Addition

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity has been proposed for addition to Procurement List for production by the nonprofit agency listed:

Case, Flag
8345–00–178–8495
NPA: North Bay Rehabilitation Services, Inc., San Rafael, California

Deletions

If the Committee approves the proposed deletions, all entities of the Federal Government will no longer be required to procure the commodities and service listed below from nonprofit agencies employing people who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for deletion from the Procurement List.

The following commodities and service have been proposed for deletion from the Procurement List:

Commodities

Harness, Head
4240–01–M14–0174

Modification Kit, Harness Head
4240–01–220–3201

Duplicate Diazo Microfiche Program
7690–00–NSH–0019
(Requirements for the Department of Health and Human Services, National Institute of Safety and Health, Cincinnati, Ohio)

Service

Sanding and Oiling of Picnic Tables
Deschutes National Forest
Bend Ranger District
Bend, Oregon

E. R. Alley, Jr.

Deputy Executive Director.

[FR Doc. 95–22363 Filed 9–7–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 9, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 23, July 14, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 32658 and 36266) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Cleaning Compound, Aircraft Surface
6850–00–005–5305

Services

Janitorial/Custodial
Defense Logistics Agency
Defense Fuel Region West, Building 100, San Pedro, California

Laundry Service
Medical Center
Wright-Patterson Air Force Base, Ohio

Mailroom Operation
Internal Revenue Service
55 Market Street, San Jose, California

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E. R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–22361 Filed 9–7–95; 8:45 am]

BILLING CODE 6820–33–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Bulgaria

September 1, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryover and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 62716, published on December 6, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 1, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in Bulgaria and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on September 11, 1995, you are directed to adjust the limits for the following categories, pursuant to the current bilateral textile agreement between the Governments of the United States and the Republic of Bulgaria:

Category	Twelve-month restraint limit [1]
410	735,102 square meters.
435	21,830 dozen.
448	21,830 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–22371 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

September 1, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 636 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 65760, published on December 21, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 1, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 16, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 6, 1995, you are directed to amend further the directive dated December 16, 1994 to increase the limit for Category 636 to 546,728 dozen [1], as provided under the terms of the bilateral agreement between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–22373 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

August 31, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

boards of of each Customs port or call (202) 927–6712. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 331/631 is being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17332, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 31, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 11, 1995, you are directed to amend the March 30, 1995 directive to reduce the limit for Categories 331/631 to 1,706,846 dozen pairs [1], as provided for under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–22374 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

September 1, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 30346, published on June 13, 1994; and 60 FR 17336, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 1, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 7, 1994, as amended on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Slovak Republic and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 6, 1995, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
433	11,923 dozen.
435	15,766 dozen.
443	106,115 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–22372 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities Under OMB Review

AGENCY: Corporation for National and Community Service (CNS).

ACTION: Information Collection Request Submitted to the Office of Management and Budget (OMB) for Review.

SUMMARY: This notice provides information about an information collection proposal by CNS, currently under review by OMB. ACTION is requesting a expedited review by OMB with final action by September 26, 1995.

DATES: OMB and ACTION will consider comments on the proposed collection of

information and recordkeeping requirements received on or before September 18, 1995. Copies of the proposed form and supporting documents may be obtained by contacting CNS.

ADDRESSES: Send comments to both—

Chuck Helfer, Study Director, CNS, 1201 New York Ave. NW., Washington, DC 20525

Debra Bond, Desk Officer, OMB, 3002 NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Chuck Helfer at (202) 606–5000, extension 248.

SUPPLEMENTARY INFORMATION:

Office of the Corporation for National and Community Service

Issuing Notice: Training Conference Evaluation.

Title of Forms: Training Conference Evaluation.

Need and Use: CNS's legislation authorizes it to provide technical assistance to agencies and non-profit organizations which sponsor CNS programs and projects. Information gathered in this information collection will be used to plan and make changes in future training conferences for sponsors and directors of CNS programs.

Type of Request: Reinstatement of a previously approved data collection for which approval has expired.

Respondent's Obligation to Reply: Voluntary.

Frequency of Collection: Once a year.

Estimated Number of Responses: 2,687.

Average Burden Hours per Response: 0.25 hours.

Estimated Annual Reporting or Disclosure Burden: 672 hours.

Regulatory Authority: 42 U.S.C. 4993 and 42 U.S.C. 12653.

Dated: September 1, 1995.

Lance Potter,

Director, Office of Evaluation.

[FR Doc. 95–22279 Filed 9–7–95; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Morganza, Louisiana, to the Gulf of Mexico Feasibility Study

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the U.S. Army Corps of Engineers (COE) will prepare a draft environmental impact statement (EIS) to analyze the direct and indirect beneficial and adverse impacts of implementing a proposed hurricane protection project in Terrebonne and Lafourche Parishes, Louisiana. The purposes of the proposed action are to provide protection to existing development from tropical storm and hurricane-induced tidal flooding such as that which occurred during Hurricane Andrew, and to protect coastal wetlands from hurricane surges in a portion of Terrebonne Parish, Louisiana. The proposed action would consist of upgrading many existing forced-drainage-system levees; using permitted and/or installed flood-control features (e.g., floodgates); constructing some new levees and water-control structures; and, closing the water-control structures and flood gates in a coordinated manner in the event of tropical storm or hurricane tidal surges.

FOR FURTHER INFORMATION CONTACT: Questions regarding the EIS may be directed to Mr. Robert Martinson, CELMN–PD–RS, U.S. Army Corps of Engineers, P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone: (504) 862–2582.

Questions regarding the proposed action may be directed to Mr. Troy Constance, CELMN–PD–FB, U.S. Army Corps of Engineers, P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone: (504) 862–2742.

SUPPLEMENTARY INFORMATION: A similar flood protection plan has been proposed by the South Terrebonne Tidewater Management and Conservation District (STTMCD). A Notice of Intent to prepare an EIS for the STTMCD plan under the COE Regulatory Program was issued on April 7, 1993 (**Federal Register**, Volume 58, Number 65, pp. 18084–18085). Because the underlying purposes of the two proposed actions are the same, and in the interest of cost effectiveness, one EIS will be prepared rather than two.

Proposed Action

The STTMCD proposed action would consist of upgrading many existing forced-drainage-system levees from near Larose at the eastern end to Waterproof on the western end; using permitted and/or installed flood-control features (e.g., floodgates) in the area; constructing some new levees and water-control structures, particularly in the Lake gates in a coordinated manner in the event of tropical storm or hurricane tidal surges. The flood gates and water control structures would normally be left open for navigation and tidal ingress and egress. Several communities, including the City of Houma, Dulac, Chauvin, and Montegut, would receive protection from the proposed action.

Alternatives

The no-action alternative must be evaluated. Additionally, several levee alignments around the Lake Boudreaux area will be evaluated, including the STTMCD plan. Non-structural solutions to protecting existing development will also be evaluated.

On May 12, 1993, the COE held a formal NEPA scoping meeting at Houma, Louisiana, for the previously announced regulatory EIS. Fifty-two individuals registered at the meeting. Questions and issues of concern were solicited at the meeting and a summary of the results was made available to participants on April 12, 1994. One of the main areas of concern brought out during the 1993 scoping was potential impacts to Lake Boudreaux, surrounding marshes, and associated marine organisms. Additional meetings with local interests from the various bayou areas will be held in the near future, and leadership and work group meetings will continue to be held to keep the public informed and involved.

The COE does not plan to hold additional formal NEPA scoping meetings at this time, but meetings will continue to be held throughout the planning process, as discussed above.

A draft EIS is scheduled to be available for public review during January 1998.

Kenneth H. Clow,

Colonel, U.S. Army, District Engineer.

[FR Doc. 95–22318 Filed 9–7–95; 8:45 am]

BILLING CODE 3710–84–M

Department of the Air Force

Notice of Intent to Prepare an EIS for a Proposed Golf Course

The Department of the Air Force is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a golf course adjacent to Luke Air Force Base in Arizona.

Luke Air Force Base (AFB) will prepare an EIS on a proposal to construct and operate a golf course and related facilities including a clubhouse, cart storage building, and maintenance building. The golf course will occupy 155 acres in Maricopa County, Arizona, on the northeast corner of Northern

Avenue and Reems Road west of Phoenix. The proposed site, which will soon be deeded to Luke AFB, was used for agricultural purposes in the past. Currently, the site is undergoing construction of the Dysart Drain Improvement Project, which includes a 160-acre detention basin designed to alleviate flooding of the military base property and facilities.

The project is being proposed so that the detention basin provides multiple purpose benefits. It is common practice in the Southwest to place recreational facilities, such as golf courses, in detention basins. Surveys show a high demand for golf by the Luke AFB population, which includes approximately 30,000 active duty and family members as well as military retirees and Department of Defense civilian employees that work at the base. Currently, the eligible members of the Luke AFB population have no military golf alternatives. The competitive environment for golf in the Phoenix metropolitan area make golf unaffordable to many military members as market rates range from $40 to $100 per round during winter months when weather in the area is most conducive for golf.

All potential significant environmental effects will be discussed in the EIS. These include air quality impacts from fugitive dust and various construction emissions generated during the construction period, an analysis of the potential effects caused by increased traffic volume in the area, and the potential for contamination of the detention basin by pesticides and fertilizers used in golf course maintenance.

The only alternative to this action is the no-action alternative, which leaves the site serving as a detention basin without a golf course.

The proposed action would not commence until after completion of the Dysart Drain Improvement Project, which is scheduled for 1997. It is estimated that the time frame for construction of the golf course and its related facilities would take 13 months.

Prior to any construction efforts, and accompanying preparation of the EIS, a public involvement plan will be implemented to solicit public opinion of the proposed action. A public scoping meeting is scheduled for 7:00 p.m. on Tuesday, September 12, 1995 at the Litchfield Park Recreation Center Community Room, 100 South Old Litchfield Road.

To ensure that all significant issues regarding the proposed action and the EIS are identified, comments and questions are invited from all interested parties, and should be addressed to Luke AFB at the address below:

Lisa Q. Carlson, Natural Resources Planner, 56 CES/CEVN, 14002 West Marauder Street, Luke Air Force Base, Arizona 85309–1125, Telephone (602) 856–3823

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–22257 Filed 9–7–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Navy

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Station, Long Beach, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority established to plan the reuse of the former Naval Station, Long Beach, CA, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Director, Department of the Navy, Real Estate Operations Division, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or LCDR April Heinze, Base Closure Manager, Southwest Division, Naval Facilities Engineering Command, 1420 Kettner Blvd., suite 507, San Diego, CA 92101–2404, telephone (619) 556–0259. For detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, condition, exact street address, etc.), contact Lieutenant Commander Kevin Barre, Base Transition Coordinator, Long Beach Naval Shipyard, Building 5, Long Beach, CA 90822–5080, telephone (310) 547–6875.

SUPPLEMENTARY INFORMATION: In 1991, the Naval Station, Long Beach, CA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. This notice relates to three parcels of the property which formed a part of that installation, i.e., the Savannah/Cabrillo family housing complex, the Ocean Boulevard parcel, and the Navy Mole and transportation corridor parcel. On March 4, 1993, and April 21, 1994, respectively, the land and facilities located at the Savannah/Cabrillo complex and the Ocean Boulevard parcel were determined to be surplus to the needs of the federal government and available for use by state and local governments, representatives of the homeless and other interested parties. In August 1995, the Navy Mole and transportation corridor were also determined to be surplus to the needs of the federal government.

Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) was signed into law. Section 2 of the Act gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the former Naval Station, Long Beach, is published in the **Federal Register**:

Redevelopment Authority

The redevelopment authority for the Savannah/Cabrillo housing complex, Ocean Boulevard parcel, and the Mole and transportation corridor at the former Naval Station, Long Beach, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of Long Beach. The City has established a local community advisory committee to provide recommendations to the City concerning the redevelopment plan. This committee is known as the ''Naval Properties Reuse Committee.'' Day-to-day operations of the committee are handled by Mr. Gerald Miller. The address of the committee is Economic Development Bureau, City of Long Beach, 200 Pine Avenue, Suite 400, Long Beach, CA 90802, Telephone (310) 570–3851, facsimile (310) 570–3897.

Surplus Property Descriptions

The following is a listing of the land and facilities at the former Naval Station, Long Beach, CA, that are declared surplus to the needs of the federal government.

Land

Approximately 56 acres of improved and unimproved fee simple land at the Savannah/Cabrillo housing complex of the former Naval Station, Long Beach, in the City of Long Beach, Los Angeles County. This area is currently available.

Approximately 3 acres of improved and unimproved fee simple land at the Ocean Boulevard parcel of the former Naval Station, Long Beach, in the City of Long Beach, Los Angeles County. This area is currently available.

Approximately 125 acres of improved and unimproved fee simple land on the Navy Mole, including Piers 9, 10, 11, 15 and 16, and transportation corridor at the former Naval Station, Long Beach, in the City of Long Beach, Los Angeles County. The transportation corridor is generally described as a parcel of land extending north of the Mole to the northern boundary of the installation. The westerly boundary of said parcel is the border between the Cities of Los Angeles and Long Beach. The easterly border extends from a point at the westerly side of the building No. 145, north between buildings 23 and 24 to a point on the north side of Reeves Avenue, thence east to align with the western fence of the softball field, thence north to the property line south of Ocean Boulevard.

The Navy Fuel Pier and associated structures, tanks, and other facilities and equipment are excluded from the determination of surplus. The fenced parcel of approximately five acres containing buildings 700, 719, 720, 757 and 850 is surplus but will not be available until the Department of the Navy has completed relocation plans for material stored on this parcel.

Buildings

The following is a summary of the facilities located at the Savannah/Cabrillo housing complex which are currently available. Property numbers are available on request.

—Family housing units (150 duplex and 42 quadplex structures with 468 individual housing units). Comments: Approx. 633,930 square feet. All units are vacant.
—Convenience store (1 structure). Comments: Approx. 4,830 square feet.
—Storage facilities, utility buildings, and maintenance shops (5 structures). Comments: Approx. 10,737 square feet.
—Detached carports (21 structures). Comments: Approx. 32,640 square feet.
—Vehicle carports (26 structures with 264 vehicle spaces). Comments: Approx. 40,239 square feet. There are 4, 6, 8, 12, and 16 vehicle structures.
—Recreation facilities (2 structures). Comments: Approx. 6,576 square feet tenant activities building and one basketball court.

The following is a summary of the facilities located on the Ocean Boulevard parcel available currently. Property numbers are available on request.

—Shop facility (1 structure). Comments: Approx. 16,400 square feet.
—Lumber shed (1 structure). Comments: Approx. 960 square feet.
—Recreation pavilion (1 structure). Comments: Approx. 280 square feet.

The following is a summary of the facilities located on the former Naval Station Mole and transportation corridor which are available unless otherwise indicated above. Property numbers are available on request.

—Office buildings (7 structures). Comments: Approx. 62,331 square feet.
—Auto hobby complex (4 structures). Comments: Approx. 6,800 square feet; includes grease rack, shop/office, covered stalls, and car wash.
—Recreation facilities (23 structures). Comments: Approx. 5,607 square feet; includes cabanas, restrooms, four tennis courts and eight softball fields.
—Storage facilities (13 structures). Comments: Approx. 28,885 square feet.
—Maintenance facilities (10 structures). Comments: Approx. 124,616 square feet.
—Retail stores (3 structures). Comments: Approx. 161,759 square feet; includes exchange, servmart, and credit union.
—Marina Complex (7 structures). Comments: Approx. 6,674 square feet; includes marina, hoist, sail club, loft, workshop, and shower.
—Bachelor Officer Housing (1 structure). Comments: Approx. 45,535 square feet.
—Restaurants (2 structures). Comments: Approx. 45,000 square feet includes officers' club and Taco Bell that is privately owned.
—Piers (4 structures). Comments: Approx. 21,597 square yards.
—Miscellaneous buildings, structures, and utilities (26 structures). Measurement systems vary; includes bus shelters, incinerators, compressor plant, electrical substations, guard and watch towers, landing ramps, mooring platforms, magazines, and salt water pumps.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, state and local governments, representatives of the homeless, and other interested parties located in the vicinity of the former Naval Station, Long Beach, may submit to said redevelopment authority (City of Long Beach) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant paragraphs 7 (C) and (D) of said Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Long Beach the date by which expressions of interest must be submitted.

Dated: August 25, 1995.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–22319 Filed 9–7–95; 8:45 am]

BILLING CODE 3810–FF–P

Intent To Grant Partially Exclusive Patent License; Devoe Coatings Company

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to the Devoe Coatings Company, a revocable, nonassignable, partially exclusive license in the United States to partice the Government owned inventions described in U.S. Patent Application Serial No. 08/077,503, entitled ''Method of Controlled Release and Controlled Release Microstructures'', filed 17 June 1993; and U.S. Patent Application entitled ''Controlled Release of Active Agents Using Inorganic Tubules'', filed 31 July 1995, Navy Case No. 76,652 in the field of non-lipid derived controlled release systems for use in marine antifouling and anticorrosive paint.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR OOCC, Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney,

Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: August 28, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–22258 Filed 9–7–95; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board, Education.

ACTION: Notice of committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Committee on Regional Educational Laboratories of the National Educational Research Policy and Priorities Board. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: September 27, 1995, 4 p.m. to 6 p.m.

ADDRESSES: 555 New Jersey Avenue, NW., room 500 C, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: John Christensen, Designated Federal Official, National Educational Research Policy and Priorities Board, 555 New Jersey Avenue NW., Washington, DC 20208–7564. Telephone: (202) 219–2065; Fax: (202) 219–1528.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (the Act). The Board works collectively with the Assistant Secretary for the Office of Educational Research and Improvement (the Office) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The Act directs the Board to provide guidance to the Congress in its oversight of the Office; to advise the United States on the Federal educational research and development effort; and to solicit advice from practitioners, policymakers, and researchers to define research needs and suggestions for research topics. The Board has designated the Committee on Regional Educational Laboratories to work on its behalf in these matters in the interim between full meetings of the Board. The meeting of the Committee is open to the public. The agenda for the meeting includes discussions about quality control and set-aside funds for first-year operations of the laboratories. A final agenda will be available from the Board's office on September 20, 1995.

Records are kept of all Board proceedings, and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Avenue NW., Washington, DC 20208–7564.

Dated: September 1, 1995.

Sharon P. Robinson,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 95–22249 Filed 9–7–95; 8:45 am]

BILLING CODE 4000–01–M

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Educational Research Policy and Priorities Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: September 28, 1995, 8:30 a.m. to 4:45 p.m.; September 29, 1995, 8 a.m. to 2 p.m.

ADDRESSES: Association of American Railroads Conference Center, 50 F Street, NW., Fourth Floor, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: John Christensen, Designated Federal Official, National Educational Research Policy and Priorities Board, 555 New Jersey Avenue NW., Washington, DC 20208–7564. Telephone: (202) 219–2065; Fax: (202) 219–1528.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (the Act). The Board works collectively with the Assistant Secretary for the Office of Educational Research and Improvement (the Office) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The Act directs the Board to provide guidance to the Congress in its oversight of the Office; to advise the United States on the Federal educational research and development effort; and to solicit advice from practitioners, policymakers, and researchers to define research needs and suggestions for research topics. The meeting of the Board is open to the public. The agenda for September 28 includes a report on the FY 96 budget for the Office of Educational Research and Improvement and reports from the Board's Committees on Research and Development Centers; Standards; and Research Priorities. The Board will review a preliminary report on priorities planning which will be issued in October 1995. The Board's Committee on Partnerships and Outreach will present its recommendations on strengthening linkages with representatives of research, practitioner, and policy-making communities so that research findings can improve practice.

On September 29 the Board will hear a report from its Committee on Regional Educational Laboratories which will focus on quality control and issues centering on knowledge transfer. The Board will also take up planning, scheduling, and budget for its activities in FY 96. A final agenda will be available from the Board's office on September 21, 1995.

Records are kept of all Board proceedings, and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Avenue NW., Washington, DC 20208–7564.

Dated: September 1, 1995.

Sharon P. Robinson,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 95–22250 Filed 9–7–95; 8:45 am]

BILLING CODE 4000–01–M

President's Board of Advisors on Historically Black Colleges and Universities; Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of a meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this

meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: September 26, 1995, from 2 pm to 5 pm.

ADDRESSES: The meeting will be held at the Marriott Metro Center located at 775 12th Street NW., Washington, DC 20005. Call (202) 708–8667 for further information.

FOR FURTHER INFORMATION CONTACT: Nancy Davis, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 1250 Maryland Avenue SW., suite 605, Washington, DC 20202–5120. Telephone: (202) 708–8667.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established under Executive Order 12876 of November 1, 1993. The Board is established to advise Administration officials on federal issues that impact Historically Black Colleges and Universities.

The meeting of the board is open to the public. The agenda includes a discussion of the impact of budgetary changes on federal support to Historically Black Colleges and Universities.

Records are kept of all Board proceedings, and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities at 1250 Maryland Avenue SW., suite 605, Washington, DC 20202, from the hours of 8:30 am to 5 pm.

Dated: August 24, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–22337 Filed 9–7–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Kirtland Area Office (Sandia).

DATES: Monday, September 18, 1995: 6:45 pm–10:00 pm (Mountain Daylight Time).

ADDRESSES: Indian Pueblo Cultural Center, 2401 12th St. NW., Albuquerque, NM.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:45 pm Public Comment Period

7:00 pm Issues Discussion: Future Land Use, Corrective Action Management Units

8:30 pm Board Subcommittee Assignments

9:30 pm Evaluation

10:00 pm Adjourn

A final agenda will be available at the meeting Monday, September 18, 1995.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above.

Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on September 5, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–22357 Filed 9–7–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Monticello Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Board Committee Meeting: Environmental Management Site-Specific Advisory Board, Monticello Site.

DATE AND TIME: Tuesday, September 19, 1995, 7 p.m.–8:30 p.m.

ADDRESS: Monticello City Hall, 17 North 1st East, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: Audrey Berry, Public Affairs Specialist, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502 (303) 248–7727.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

The Environmental Management Site-Specific Advisory Board, Monticello Site, will be discussing reports from subcommittees on health and safety, budget, future land use, and repository design.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (303) 248–7727.

Issued at Washington, DC on September 5, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–22359 Filed 9–7–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Saturday, September 9, 1995 2:00 pm—6:00 pm.

ADDRESSES: VFW Hall, Caliente, NV.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. DOE, Nevada Operations Office, AMEM, P.O. Box 98518, Las Vegas, NV 89193–8518, ph. 702–295–0197 fax 702–295–1810.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

Saturday, September 9, 1995

2:00 p.m.
- Meeting Begins
- Introduction
- Overview of Site Group
- Presentations: Update on Nevada Test Site (NTS) Environmental Impact Statement (EIS); Update on Future Land Use at NTS
- Public Comment
- Break
- Approval of Meeting Minutes
- Review of Action Items
- New Business
- Committee Reports:
  - Transportation
  - EIS
  - Charter/Bylaws
  - ER Funding
  - Diversification

6:00 p.m.
- Meeting Adjourns

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details. A final agenda will be available at the meeting Saturday, September 9, 1995.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer's office at the address or telephone number listed above. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that needed to be resolved, this notice is being published less than 15 days in advance of the meeting.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays.

Issued at Washington, DC on September 5, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–22358 Filed 9–7–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Hanford Site.

DATES: Thursday, September 21, 1995, 6:00 pm—9:00 pm.

ADDRESSES: Oak Ridge Mall Community Room, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Sandra Perkins, Site Group Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (615) 576–1590.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

September Meeting Topics

The initial meeting for the EM SSAB, Oak Ridge will be conducted to allow members to begin addressing issues required for the Board to begin functioning. Topics to be discussed are largely organizational, such as: draft operational procedures, chair selection process, future meeting dates and times, goals for the Board, and any training needs for Board members. The Board members will have an opportunity to discuss issues related to the Environmental Management program to help guide the waste management and cleanup program on the Oak Ridge Reservation.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Sandra Perkins' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between

9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Sandy Perkins, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (615) 576–1590.

Issued at Washington, DC on September 5, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–22360 Filed 9–7–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES: Monday, September 25, 1995:

1:30 p.m.—5 p.m. (tentative session—group dynamics discussion)

6:00 p.m.—7:00 p.m. (public comment session)

7:00 p.m.—9:00 p.m. (subcommittee meetings Bylaws and issues)

Tuesday, September 26, 1995: 8:30 a.m. to 4:00 p.m.

ADDRESSES: The Holiday Inn, U.S. 21—Loveless Street, Beaufort, South Carolina.

FOR FURTHER INFORMATION CONTACT: Tom Heenan, Manager, Environmental Restoration and Solid Waste, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–8074.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Monday, September 25, 1995

1:30 p.m. Group Dynamics Discussion (tentative)
6:00 p.m. Public Comment Session (5-minute rule)
7:00 p.m. Subcommittee Meetings
9:00 p.m. Adjourn

Tuesday, September 26, 1995

8:00 a.m. Welcome
8:30 a.m. Approval of minutes, Board discussions
9:00 a.m. Risk Management & Future Use Subcommittee Recommendations
11:45 a.m. Lunch
12:45 p.m. Environmental Remediation & Waste Management Subcommittee Report
2:30 p.m. Agency updates, facilitator report
2:45 p.m. Membership and Nominations Elections
3:30 p.m. Public Comment Session (5-minute rule)
4:00 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details.

A final agenda will be available at the meeting Monday, September 25, 1995.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Heenan's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday—Friday except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling him at (803) 725–8074.

Issued at Washington, DC on September 5, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–22356 Filed 9–7–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. PP–107]

Application for Presidential Permit, Arizona Public Service Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Arizona Public Service Company (APS) has applied for a Presidential Permit in order to construct a new transmission facility at the U.S. border with Mexico.

DATES: Comments, protests or requests to intervene must be submitted on or before October 10, 1995.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Warren E. Williams (Program Office) 202–586–9629 or Mike Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electrical energy is prohibited in the absence of a Presidential permit pursuant to Executive Order No. 12038. Exports of electricity from the United States to a foreign country are also regulated and require authorization under section 202(e) of the Federal Power Act.

On June 22, 1995, APS filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for a Presidential permit. This application has been docketed as PP–107. In its application, APS proposes to tap an existing 34.5-kilovolt (kV) line that originates at the existing Fairview Substation in Douglas, Arizona, and to extend the tap approximately 4,000 feet to the international border adjacent to Agua Prieta, Sonora, Mexico. The Fairview substation will be upgraded by adding a transformer and other equipment in order to accommodate the proposed facilities. The proposed power line structures are to be located within a state highway right-of-way.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protest also should be filed directly with: Dennis Beals, Manager, Bulk Power Trading & Customer Services, Arizona Public Service Company, P.O. Box 53999, Station 9860, Phoenix, AZ 85072–3999 and Bruce A. Gardner, Esq., Senior Attorney, Arizona Public Service Company, P.O. Box 53999, Station 9820, Phoenix, AZ 85072–3999.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE 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 petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on the application for Presidential permit contained in docket PP–107 after a determination is made by the DOE that the proposed action is in the public interest and will not adversely impact on the reliability of the U.S. electric power supply system.

Before a Presidential permit or electricity export authorization may be issued or amended, the environmental impacts of the proposed DOE action must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA).

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on August 31, 1995.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–22217 Filed 9–7–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 10867 Indiana]

Holliday Historic Restoration, Associates; Notice of Availability of Final Environmental Assessment

September 1, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Holliday Hydroelectric Project located on the West Fork of the White River in Noblesville, Hamilton County, Indiana, and has prepared a Final Environmental Assessment (FEA) for the proposed project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–22269 Filed 9–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2417 Wisconsin]

Northern States Power Company; Notice of Availability of Final Environmental Assessment

September 1, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for a subsequent license for the existing Hayward Hydroelectric Project, located on the Namekagon River, in the City of Hayward, Sawyer County, Wisconsin and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff analyzed the potential environmental effects of the existing project and has concluded that approval of the project, with appropriate protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The Notice of Availability of Draft Environmental Assessment for the Hayward Hydroelectric Project was issued on June 16, 1994. In response, the Commission received three comment letters which were reviewed by the Commission's staff and addressed in the FEA.

Copies of the FEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–22270 Filed 9–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 1, 1995.

Take notice that on August 30, 1995, Eastern Shore Natural Gas Company (ESNG) tendered for filing certain substitute revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective October 1, 1995.

ESNG states that the purpose of the instant filing is to reflect a decrease of $0.0001 per dt in the Annual Charge Adjustment (ACA) in the commodity portion of its sales and transportation rates. Pursuant to Order No. 472, the Commission assessed ESNG its ACA charge based on $0.0023/Mcf for the annual period commencing October 1, 1995. In accordance with Section 25 of the General Terms and Conditions of ESNG's FERC Gas Tariff, ESNG's proposed tariff sheets track the Commission approved ACA rate of $0.0023 per Mcf ($0.0022 per dt on ESNG's system) commencing October 1, 1995.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

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 Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211, 385.214). All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–22272 Filed 9–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 1, 1995.

Take notice that on August 30, 1995, Eastern Shore Natural Gas Company (ESNG), tendered for filing certain substitute revised tariff sheets included in Appendix A to the filing. Such sheets are proposed to be effective October 1, 1995.

ESNG states that the purpose of the instant filing is to track changes made in the rates for storage service purchased from Columbia Gas Transmission under its Rate Schedule FSS and SST, the costs of which are included in the rates and charges payable under ESNG's Rate Schedules CWS and CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211, 385.214). All such motions or protests should be filed on or before September 11, 1995. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–22273 Filed 9–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11493–001 Utah]

L.B. Industries, Inc.; Notice of Surrender of Preliminary Permit

September 1, 1995.

Take notice that L.B. Industries, Inc., Permittee for the Brink Pumped Storage Project No. 11493, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11493 was issued November 8, 1994, and would have expired October 31, 1997. The project would have been located on lands administered by the Bureau of Land Management, near Bear Valley, in Sevier County, Utah.

The Permittee filed the request on August 14, 1995, and the preliminary permit for Project No. 11493 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–22271 Filed 9–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–424–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

September 1, 1995.

Take notice that on August 29, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Second Revised Volume No. 2, revised tariff sheets to be effective December 1, 1995.

Natural states that the purpose of the filing is to comply with the Commission's June 26, 1995 order in Docket Nos. RP95–326–000 and RP95–242–000 under which Natural is to submit revised rates reflecting the customers' August 1 service elections. This filing deals with the Primary Case submitted by Natural. Natural states that while the service elections were generally submitted under the new services pursuant to the Pro Forma Case, those elections provided Natural with specific evidence as to the level of services its customers desire on Natural's system on and after December 1, 1995. This filing is being submitted solely as a fall back in the event the Commission does not allow the Pro Forma Case (revised rates for which were submitted on August 18) to go into effect on December 1, 1995.

Natural states that due to the significant fly-up in maximum rates created by these changes, it is proposed a deferred cost procedure to avoid such rate increases.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective December 1, 1995.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers, interested state regulatory agencies and all parties on the official service list.

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, N.E., Washington, D.C. 20426, in accordance with Section 385.211 or 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 27, 1995. 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.

Linwood A. Watson,

Acting Secretary.

[FR Doc. 95–22274 Filed 9–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–55–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 1, 1995.

Take notice that on August 30, 1995, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets:

Ninth Revised Sheet No. 546
Eighth Revised Sheet No. 547
Ninth Revised Sheet No. 548
Tenth Revised Sheet No. 549
Ninth Revised Sheet No. 550

Ninth Revised Sheet No. 551
Ninth Revised Sheet No. 553
Eighth Revised Sheet No. 554
Ninth Revised Sheet No. 555
Tenth Revised Sheet No. 556
Ninth Revised Sheet No. 557
Ninth Revised Sheet No. 558
Ninth Revised Sheet No. 560
Eighth Revised Sheet No. 561
Ninth Revised Sheet No. 562
Tenth Revised Sheet No. 563
Ninth Revised Sheet No. 564
Ninth Revised Sheet No. 565
Ninth Revised Sheet No. 567
Eighth Revised Sheet No. 568
Ninth Revised Sheet No. 569
Tenth Revised Sheet No. 570
Ninth Revised Sheet No. 571
Ninth Revised Sheet No. 572
Ninth Revised Sheet No. 575
Eighth Revised Sheet No. 576
Ninth Revised Sheet No. 577
Ninth Revised Sheet No. 578
Eighth Revised Sheet No. 579
Ninth Revised Sheet No. 580
Ninth Revised Sheet No. 581
Eighth Revised Sheet No. 582
Ninth Revised Sheet No. 583
Tenth Revised Sheet No. 599
Ninth Revised Sheet No. 600
Ninth Revised Sheet No. 601

The proposed effective date of the tariff sheets listed above is September 1, 1995.

Texas Eastern states that it is submitting the above referenced tariff sheets to reflect the modifications to Sections 9.2, 9.3, 9.4, 9.5, 9.9, and 14.4 of the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1, to reflect Base and Operational Segment Entitlements effective September 1, 1995.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

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. All such motions or protests should be filed on or before September 11, 1995. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–22275 Filed 9–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OR95–34–000]

Tosco Corporation v. SFPP, L.P.; Notice of Complaint

September 1, 1995.

Take notice that on August 7, 1995, Tosco Corporation (Tosco) filed a complaint pursuant to Section 13(1) of the Interstate Commerce Act (ICA), Section 1803 of the Energy Policy Act of 1992, and Rule 206 of the Commission's Rules of Practice and Procedure against SFPP, L.P. (SFPP) in the above-referenced docket.

The complaint alleges that SFPP violated and continues to violate section 1 of the ICA by establishing and charging unjust and unreasonable rates on its system, pursuant to FERC Tariff Nos. 15, 16, 17, and 18. Tosco requests that the Commission order refunds, reparations, and damages in accordance with the ICA. Tosco also asks that its complaint be consolidated with ongoing proceedings in Docket No. OR92–8–000, *et al.* In the alternative, Tosco asks that the matter be consolidated with the complaint filed against SFPP by Mobil Oil Corporation in Docket No. OR95–5–000.

Any person desiring to be heard or to protest the instant complaint 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 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 2, 1995. 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. Answers to this complaint shall be due on or before October 2, 1995.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–22276 Filed 9–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–50–001]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 1, 1995.

Take notice that on August 25, 1995, Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute First Revised Sheet No. 303. The proposed effective date of the tariff sheet is September 17, 1995.

WNG states that the purpose of the instant filing is to amend the August 17 filing to reflect the FTS winter Transportation Market Area MDTQ for City Utilities of Springfield, Mo. and to show the summer MDTQ in a footnote.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the above referenced docket and on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–22277 Filed 9–7–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5228–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 21, 1995 Through August 25, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–AFS–C65002–PR Rating EC2, Caribbean National Forest Land and Resource Management Plan, Implementation, PR.

SUMMARY: EPA expressed environmental concerns about the

proposed project's potential impacts to wetlands, water quality, and biodiversity. Additional information should be provided in the final EIS to address these issues.

ERP No. D–AFS–K60028–CA Rating EC2, Elsmere Solid Waste Management Facility, Implementation, Angeles National Forest (ANF) Land Adjustment Plan, Conditional Use and Oak Tree Permit, Los Angeles County, CA.
SUMMARY: EPA expressed environmental concerns with potential adverse impacts to air quality and biological resources (e.g., riparian habitat). Additional information is needed regarding environmental justice, faulting, landfill design, groundwater protection, and adequate offsets for air quality emissions.

ERP No. D–AFS–L65245–ID Rating EC2, Main Salmon Post-Fire Project, Implementation, Payette National Forest, New Meadows and McCall Ranger District, Idaho County, ID.
SUMMARY: EPA expressed environmental concerns based on water quality impacts from road construction and timber salvage. Additional information is needed on sediment model validation, monitoring and air quality.

ERP No. D–COE–G39028–TX Rating LO, Gulf Intracoastal Waterway (Section 216 Study), Bank Protection and a Spill Containment Feature, Implementation, Aransas National Wildlife Refuge, Galvestion District, Aransas, Calhoun and Refugio Counties, TX.
SUMMARY: EPA had no objection to the proposed action.

ERP No. D–FHW–L40197–OR Rating EC2, Mount Hood Corridor Study, US 26 Rhododendron to OR–35 Junction, Improvements, Funding, Clackamas County, OR.
SUMMARY: EPA expressed environmental concerns regarding potential water and air quality issues. EPA requested that these issues be clarified in the final EIS.

ERP No. D–MMS–G02005–00 Rating LO, 1996 Central and Western Gulf of Mexico Outer Continental Shelf (OSC) Oil and Gas Lease Sales No. 157 (March 1996) and No. 161 (August 1996), Lease Offerings, Offshore coastal counties and parishes of Al, MS, LA and TX.
SUMMARY: EPA had no objection to the proposed action.

ERP No. D–USN–G11028–TX Rating LO, Mine Warfare Center of Excellance (MWCE) Establishment, Construction and Operations, Magnitic Silencing Facility (MSF), Aviation Mine Count Measures (AMCM) and Sled Facility, Possible NPDES Permit, COE Section 10 and 404 Permits, Corpus Christi Bay Area, TX.
SUMMARY: EPA had no objection to the proposed action.

Final EISs

ERP No. F–BLM–J02030–WY Texaco's Stagecoach Draw Unit Natural Gas Field Development Project, Implementation, Application for Permit to Drill, Right-of-Way Grant, Temporary Use-Permit and COE Section 404 Permit, Farson, Sweetwater County, WY.
SUMMARY: Based on existing, planned and potential mineral and gas development in S.W. Wyoming, EPA expressed concerns about cumulative impacts.

ERP No. F–UMC–K11058–CA San Onofre Area Sewage Effluent Compliance Project, Cease and Desist Order, Camp Pendleton Marine Corps Base, San Diego County, CA.
SUMMARY: EPA had no objection to the final EIS.

ERP No. FA–AFS–L65147–AK Bohemia Mountain Timber Sale, Updated Information concerning Resolution of Three Appeal Issues Regarding Harvesting Timber, Tongass National Forest, Stikine Area, AK.
SUMMARY: EPA expressed environmental concerns with the effect of the action alternatives on water quality and fisheries.

Other

ERP No. LD–AFS–L65242–OR Rating LO, Dutch Flat Creek, Killamacue Creek and Rock Creek Wild and Scenic River Study, Designation or Nondesignation, National Wild and Scenic River System, Wallowa-Whitman National Forest, American Rivers, Baker County, OR.
SUMMARY: EPA had no objection to the proposed action.

Dated: September 5, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–22366 Filed 9–7–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5228–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed August 28, 1995 Through September 1, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950403, Final EIS, AFS, ND, Southern Little Missouri and Cedar River Oil and Gas Leasing, Approvals, Custer National Forest, Medora Ranger District, Cedar River National Grassland, Grant River Ranger District, Billings, Golden Valley, Slope, Grant and Sioux Counties, ND, Due: October 10, 1995, Contact: Greg Visconty (406) 657–6361.

EIS No. 950404, Final EIS, UAF, AK, Alaska Military Operations Areas (MOAs) Temporary MOAs Conversion to Permanent MOAs; New MOAs Creation; MOAs Modification; Supersonic Aircraft Operations and Routine Flying Training, Joint/Combined Flying Training and Major Flying Exercises Activities, Elmendorf Air Force Base, AK, Due: October 10, 1995, Contact: Jim Hostman (907) 552–4151.

EIS No. 950405, Draft EIS, AFS, MT, Rock Creek Copper/Silver Mine Project, Construction and Operation, COE Section 404 Permit and Permits Approval, Kootenai National Forest, Sanders County, MT, Due: October 23, 1995, Contact: Paul Kaiser (406) 293–6211.

EIS No. 950406, Final EIS, NOA, PR, VI, U. S. Virgin Islands and Puerto Rico Corals and Reef Associated Plants and Invertebrates Fishery Management Plan, Implementation and NPDES Permit, PR and VI, Due: October 10, 1995, Contact: Rolland A. Schmitten (301) 713–2239.

EIS No. 950407, Final EIS, COE, VA, Grundy Flood Damage Reduction/Highway Upgrade Project, Implementation, Town of Grundy, Buchanan County, VA, Due: October 10, 1995, Contact: A. Benjamin Borda (304) 529–5712.

EIS No. 950408, Final EIS, IBR, OR, Fish Passage Improvements, Savage Rapids Dam, Implementation, Grants Pass Irrigation District, Rogue River, Josephine and Jackson Counties, OR, Due: October 10, 1995, Contact: Robert J. Hamilton (208) 378–5087.

EIS No. 950409, Final EIS, DOE, NM, Dual Axis Radiographic Hydrodyamic Test (DARHT) Facility, Construction and Operation, Approval of Operating Permit, Los Alamos National Laboratory (LANL), Los Alamos and Santa Fe Counties, NM, Due: October 10, 1995, Contact: M. Diana Webb (505) 665–6353.

EIS No. 950410, Final EIS, FHW, WA, WA–520 Corridor Improvements, Construction and Reconstruction, between 104th Avenue N.E. and West Lake Sammamish Parkway (Formerly WA–901), Funding and COE Section 404 Permit, the Cities of Bellevue and Redmond, King County, WA, Due: October 10, 1995, Contact: Gene Fong (206) 753–2120.

EIS No. 950411, Draft EIS, FHW, WA, North Spokane Freeway Project, Tranportation Improvements through

the City of Spokane and Spokane County between I–90, Spokane County, WA, Due: October 27, 1995, Contact: Gene Fong (360) 753–9413.

EIS No. 950412, Draft EIS, COE, CA, Magpie Creek Channel Section 205 Flood Control Investigation Project, Improvements, Implementation and NPDES Permit Issuance, McCellan Air Force Base, City of Sacramento and lands within the County of Sacramento CA, Due: October 23, 1995, Contact: Joseph Broadhead (916) 264–7622.

EIS No. 950413, Draft EIS, FHW, CA, Alternatives to Replacement of the Embarcadero Freeway and the Terminal Separator Structure, (Formerly CA–480) Implementation, Permit Approvals and Funding, San Francisco County, CA, Due: October 23, 1995, Contact: John R. Schultz (916) 498–5041.

EIS No. 950414, Draft Supplement, FHW, NB, South Locust Street (also known as Old Highway 281) Transportation Improvements, Additional Information, I–80 to the Grand Island and North of US 34, Funding and COE Section 404 Permit, Hall County, NB, Due: October 23, 1995, Contact: Phillip E. Barnes (402) 437–5521.

Amended Notices

EIS No. 950376, Draft EIS, AFS, CO, Rio Grande National Forest Land and Resource Management Plan, Implementation, Archuleta, Rio Grande, Custer, Hinsdale, Alamosa, San Juan, Conejos, Mineral and Saquache Counties, CO, Due: December 22, 1995, Contact: James B. Webb (719) 852–5941. Published FR–08–25–95 Due Date Correction.

EIS No. 950383, Draft EIS, MMS, AK, Beaufort Sea Planning Area Proposed 1996 Oil and Gas Lease Sale No. 144, Lease Offerings, Alaska Outer Continential Shelf (OSC), AK, Due: November 20, 1995, Contact: George Valiulis (703) 787–1662. Published FR–08–25–95 Due Date Correction.

Dated: September 5, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–22367 Filed 9–7–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5293–8]

Jack's Creek/Sitkin Smelting Superfund Site De Minimis Settlement; Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: United States Environmental Protection Agency.

ACTION: Request for Public Comment.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of Diversified Industries, Inc., Scullin Steel Company (formerly Eastern Diversified Metals Corporation), and Theodore Sall, Inc. for response costs incurred by the United States Environmental Protection Agency at the Jack's Creek/Sitkin Smelting Superfund Site, Maitland County, Pennsylvania.

DATES: Comments must be provided on or before October 10, 1995.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, and should refer to: In Re: Jack's Creek/Sitkin Smelting Superfund Site, Maitland County, Pennsylvania, U.S. EPA Docket No. III–94–40–DC.

FOR ADDITIONAL INFORMATION CONTACT: Daniel Isales (215) 597–4774, or Pamela Lazos (215) 597–8504, United States Environmental Protection Agency, Office of Regional Counsel, (3RC22), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Notice of De Minimis Settlement: In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), and Section 7003(d) of the Solid Waste Disposal Act, 42 U.S.C. 6973(d), notice is hereby given of a proposed administrative settlement concerning the Jack's Creek/Sitkin Smelting Superfund Site in Maitland County, Pennsylvania. The administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on March 6, 1995 and is subject to review by the public pursuant to this Notice. The agreement is also subject to the approval of the Attorney General, United States Department of Justice or her designee and for the grant of a covenant not to sue for damages to natural resources, is also subject to agreement in writing by the Department of the Interior (''DOI'').

The settling parties collectively agreed to pay $14,478.00 to United States Environmental Protection Agency toward EPA response costs and $522.00 to DOI for damages to natural resources, subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice.

EPA is entering into this agreement under the authority of Sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. 9622(g), authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities under, inter alia, Section 107 of CERCLA, 42 U.S.C. 9607, to reimburse the United States for response costs incurred in cleaning up Superfund sites without incurring substantial transaction costs. The grant of a covenant not to sue for damages to natural resources by DOI to those parties paying their share of such allocated costs is subject to agreement in writing by DOI pursuant to Section 122(j) of CERCLA, 42 U.S.C. 9622(j).

The Environmental Protection Agency will receive written comments upon this proposed administrative settlement for thirty (30) days from the date of publication of this Notice. Moreover, pursuant to Section 7003(d) of the Solid Waste Disposal Act, 42 U.S.C. 6973(d), the public may request a meeting in the affected area. A copy of the proposed Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC20), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107 by contacting Daniel Isales at (215) 597–4774 or Pamela Lazos at (215) 597–8504.

Peter H. Kostmayer,

Regional Administrator, EPA, Region III.

[FR Doc. 95–22335 Filed 9–7–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5293–7]

Proposed Administrative Penalty Assessment and Opportunity to Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed assessment of Clean Water Act Class I administrative penalty and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty for

alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalty.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who without authorization discharges a pollutant to a navigable water, as those terms are defined in section 502 of the Act, 33 U.S.C. 1362, may be assessed a penalty of up to $25,000 by EPA in a ''Class I'' administrative penalty proceeding. Class I proceedings under section 309(g) are conducted in accordance with the proposed ''Consolidated Rules of Practice Governing the Administrative Assessment of Class I Civil Penalties Under the Clean Water Act'' (''Part 28''), published at 56 FR 29996 (July 1, 1991).

EPA is providing notice of the following proposed Class I penalty proceeding initiated by the Water Management Division, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105:

In the Matter of Oracle Ridge Mining Partners, Docket No. CWA–IX–FY95–07, filed August 25, 1995; proposed penalty, $25,000; for unauthorized discharges to Gibb Wash and Geesaman Wash between April 1991 and September 1994, and for failure to develop and implement a spill prevention control and countermeasure plan by the deadline required in 40 CFR 112.3, at the Oracle Ridge Mine in Pima County, AZ.

The procedures by which the public may comment on a proposed Class I penalty or participate in a Class I penalty proceeding are set forth in Part 28. The deadline for submitting public comment on a proposed Class I penalty is thirty days after issuance of public notice. The Regional Administrator of EPA, Region 9 may issue an order upon default if the respondent in the proceeding fails to file a response within the time period specified in Part 28.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of Part 28, review the complaint, proposed consent order, or other documents filed in this proceeding, comment upon the proposed penalty, or participate in any hearing that may be held, should contact Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, (415) 744–1389. Documents filed as part of the public record in this proceeding are available for inspection during business hours at the office of the Regional Hearing Clerk.

In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to thirty days after issuance of this notice.

Dated: August 29, 1995.

Alexis Strauss,

Acting Director, Water Management Division.

[FR Doc. 95–22334 Filed 9–7–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 95–1854]

Pleading Cycle Established for Comments on Request for Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations

AGENCY: Federal Communications Commission.

ACTION: Public notice.

SUMMARY: This Public Notice established a pleading cycle for comments on a Request for Declaratory Ruling filed by a group of parties regarding the use of digital modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations. The Commission intends to promptly facilitate the use of digital equipment for these services.

DATES: Comments must be received on or before September 22, 1995, and reply comments must be received on or before October 10, 1995.

ADDRESSES: Comments and reply comments may be mailed to Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Charles E. Dziedzic or Brandon J. Bullis at (202) 418–1600, Video Services Division, Mass Media Bureau.

The complete text of the Public Notice follows. The Public Notice and a copy of the Request for Declaratory Ruling are available for public inspection in room 207, 2033 M Street, NW., Washington, DC and may also be obtained from the Commission's copy contractor, ITS, Inc. at (202) 418–0620.

Report No. MM 95–83

Released: August 23, 1995

On July 13, 1995, a request for declaratory ruling on the use of digital modulation by Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) stations was filed by a group of ninety-nine parties consisting of MDS and ITFS licensees, wireless cable operators, equipment manufacturers, industry engineers and associations (Petitioners).

Petitioners request that the Commission examine the current MDS and ITFS operational requirements that were adopted before digital compression technology was envisioned and reinterpret them appropriately for digital operations. According to Petitioners, testing conducted in support of this petition demonstrates that the Commission's current MDS and ITFS interference protection rules will safely ensure protection of analog and digital systems during an initial digital transition, with only minimal rule clarifications and waivers necessary. Specifically, Petitioners propose that the Commission apply its current co-channel and adjacent channel desired-to-undesired interference ratios, and for those utilizing digital transmissions, relax the limitations on out-of-band emissions and permit licensees to operate at less than authorized power for an interim period. *See* 47 CFR 21.902, 74.903, 21.908, 74.936(b), 21.107(c) and 74.951(f). Petitioners ask the Commission to clarify whether, under the minimum ITFS programming requirements, additional ITFS programming must be reserved by licensees who expand capacity of their spectrum by utilizing digital compression technology. *See* 47 CFR 74.931. In addition, Petitioners ask the Commission to reinterpret several other requirements that were adopted before digital compression technology was envisioned. For example, Petitioners ask that the Commission determine whether ITFS station identification through the periodic transmission of ITFS call signs must be made over one or all of the channels created through use of digital compression. *See* 47 CFR 74.982.

Petitioners contend that the rapid introduction of digital technology by wireless cable system operators is in the public interest because it will increase the competitive viability of the wireless cable industry and it will also permit educators to increase their transmission capacity. Thus, Petitioners ask the Commission to act promptly on the request in order to have a regulatory framework in place that will permit MDS and ITFS operators to quickly implement digital transmission as soon as equipment is commercially available. Finally, Petitioners suggest that although future testing and information may indicate that further rule changes

are appropriate, use of the current rules, with minor rule clarifications and waivers, offered a conservative transitional approach.

Interested parties should file comments on this request by September 22, 1995, and reply comments by October 10, 1995, with the Secretary, FCC, 1919 M Street, NW., Washington, DC 20554. A copy should also be sent to Brandon J. Bullis, Mass Media Bureau, FCC, room 702, 1919 M Street, NW., Washington, DC 20554, and to the Commission's contractor for public service records duplication: ITS, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037. Copies of the above-referenced filings are available for public inspection in room 207, 2033 M Street, NW., Washington, DC and may also be obtained from the Commission's copy contractor, ITS, Inc. at (202) 418–0620. For further information, please contact Charles E. Dziedzic or Brandon J. Bullis at (202) 418–1600.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22033 Filed 9–7–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of July 5-6, 1995

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on July 5-6, 1995.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that the level of economic activity was about unchanged in the second quarter. Nonfarm payroll employment fell in April and May after posting reduced gains in the first quarter, and the civilian unemployment rate, at 5.7 percent in May, was up somewhat from its first-quarter average. Industrial production continued to decline in May, reflecting another cutback in the production of motor vehicles, and capacity utilization was down somewhat further. Total retail sales have been sluggish on average in recent months. Housing starts were about unchanged over April and May, but sales of new homes turned up sharply in May. Orders for nondefense capital goods have moderated somewhat in recent months but still point to considerable further expansion of spending on business equipment; nonresidential construction has continued to trend appreciably higher. The nominal deficit on U.S. trade in goods and services widened in April from its average rate in the first quarter. Broad indexes of consumer and producer prices have increased faster on average thus far this year, though there were signs of some moderation in the most recent data; advances in labor compensation costs have remained subdued.

Most interest rates have declined somewhat further since the Committee meeting on May 23. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies declined considerably over the intermeeting period.

M2 and M3 strengthened substantially in May and June. For the year through June, M2 expanded at a rate in the upper half of its range for 1995 and M3 grew at a rate well above its range. Total domestic nonfinancial debt has grown at a rate in the upper half of its monitoring range in recent months.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee reaffirmed at this meeting the range it had established on January 31-February 1 for growth of M2 of 1 to 5 percent, measured from the fourth quarter of 1994 to the fourth quarter of 1995. The Committee also retained the monitoring range of 3 to 7 percent for the year that it had set for growth of total domestic nonfinancial debt. The Committee raised the 1995 range for M3 to 2 to 6 percent as a technical adjustment to take account of changing intermediation patterns. For 1996, the Committee established on a tentative basis the same ranges as in 1995 for growth of the monetary aggregates and debt, measured from the fourth quarter of 1995 to the fourth quarter of 1996. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to decrease slightly the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint might or slightly lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with moderate growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, August 31, 1995.

Normand R. Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 95-22389 Filed 9-7-95; 8:45 am]

BILLING CODE 6210-01-F

[1] Copies of the Minutes of the Federal Open Market Committee meeting of July 5-6, 1995, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Notice of Availability Environmental Assessment, Port of Entry, Located at Oroville, Okanogan County, Washington

The General Services Administration (GSA) hereby gives notice an Environmental Assessment (EA) has been prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended and the Council on Environmental Quality (CEQ) Regulations, 40 CFR parts 1500–1508 of July 1, 1986. The EA was prepared for the proposed expansion of the Port of Entry located at Oroville, Okanogan County, Washington.

Written comments on the proposed action, impacts and mitigation measures may be submitted to GSA's subconsultant Berger/ABAM Engineers Inc., at the following address: 33301 Ninth Avenue South, Federal Way, Washington 98003–6395, during the 30-day public comment period, which begins on August 18, 1995 and concludes on September 18, 1995. It is anticipated a Finding of No Significant Impact (FONSI) for this project will be prepared, signed and become final after completion of the public comment period, provided no new information leading to a contrary finding is received or is made available during the 30-day comment period.

For further information contact Donna M. Meyer, Regional Environmental Program Officer, General Services Administration, Public Buildings Service (10PC), 400 15th Street SW., Auburn, Washington 98001–6599. Telephone: (206) 931–7675.

Dated: August 23, 1995.

L. Jay Pearson,

Regional Administrator (10A).

[FR Doc. 95–22268 Filed 9–7–95; 8:45 am]

BILLING CODE 6820–23–M

GOVERNMENT PRINTING OFFICE

Public Meeting for Federal, State and Local Agencies, and Others Interested in a Demonstration of GPO Access, the Online Service Providing the Federal Register and Other Federal Databases

The Superintendent of Documents will hold a public meeting for Federal, state and local government agencies, and any others interested in an overview and demonstration of the Government Printing Office's online service, *GPO Access,* provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

The demonstration will be held Monday, October 16, 1:00 p.m.–2:30 p.m. and 3:00 p.m.–4:30 p.m. at the University of Memphis Libraries, Room 225B, Zach Curlin and Norriswood, Memphis, TN 38152. There is no charge to attend.

The online **Federal Register** Service offers access to the daily issues of the **Federal Register** by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database as ASCII text files, with graphics provided in TIFF format and as Adobe Acrobat Portable Document Format files (PDF). The online **Federal Register** is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through *GPO Access* include the *Congressional Record; Congressional Record Index,* including the *History of Bills;* Congressional Bills; Public Laws; *U.S. Code;* and *GAO Reports.* Individuals interested in attending may reserve a space by contacting John Berger, Product Manager at the GPO's Office of Electronic Information Dissemination Services, by Internet e-mail at john@eids05.eids.gpo.gov; by telephone: 202–512–1525; or by fax: 202–512–1262 . Seating reservations will be accepted through Friday, October 13, 1995.

August 22, 1995.

Michael F. DiMario,

Public Printer.

[FR Doc. 95–22242 Filed 9–7–95; 8:45 am]

BILLING CODE 1505–02–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Savannah River Site Health Effects Subcommittee (SRS).

Times and Dates: 1 p.m.–5 p.m., September 21, 1995; 9 a.m.–5 p.m., September 22, 1995.

Place: Ramada Plaza Hotel, 640 Broad Street, Augusta, Georgia 30901, telephone 706/722–5541, FAX 706/724–0053.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Background

Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''), These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose

The purpose of this meeting is to begin work to update the public on the status of CDC's and ATSDR's community involvement plans, health research, and public health activities and present consensus advise and recommendations to CDC and ATSDR regarding these plans.

Matters to be Discussed

The Subcommittee will take into consideration information provided by technical experts on the history of the Savannah River Site and present operations there, as well as updates on the Savannah River Site Dose Reconstructions Project findings and implications. The Subcommittee will also work on organizational issues relating to its future activities.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information

Paul G. Renard or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE., (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: September 1, 1995.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 95–22376 Filed 9–7–95; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 90F–182]

Allied Colloids Ltd.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to future filing, of a food additive petition (FAP 8B4095) proposing that the food additive regulations be amended to provide for the safe use of the copolymer of dimethylamine, epichlorohydrin and diethylenetriamine as a retention and drainage aid in the manufacture of paper and paperboard.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration,

200 C St. SW., Washington, DC 20204, 202–418–3080.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 14, 1990 (55 FR 24158), FDA announced that a food additive petition (FAP 8B4095) had been filed by Allied Colloids Ltd., P.O. Box 38, Low Moor, Bradford, West Yorkshire, England, BD–12–OJZ. The petition proposed to amend the food additive regulations to provide for the safe use of the copolymer of dimethylamine, epichlorohydrin and diethylenetriamine as a retention and drainage aid in the manufacture of paper and paperboard.

Allied Colloids Ltd. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: August 18, 1995.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–22370 Filed 9–7–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[MB–094–N]

RIN 0938–AG61

Medicaid Program; Limitations on Aggregate Payments to Disproportionate Share Hospitals: Federal Fiscal Year 1995

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

ACTION: Notice.

SUMMARY: This notice announces the final Federal fiscal year (FFY) 1995 national target and individual State allotments for Medicaid payment adjustments made to hospitals that serve a disproportionate number of Medicaid recipients and low-income patients with special needs. We are publishing this notice in accordance with the provisions of section 1923(f)(1)(C) of the Social Security Act (the Act) and implementing regulations at 42 CFR 447.297 through 447.299. The final FFY 1995 State disproportionate share hospital (DSH) allotments published in this notice supersede the preliminary FFY 1995 DSH allotments that were published in the **Federal Register** on January 13, 1995 (60 FR 3250).

EFFECTIVE DATE: The final DSH payment adjustment expenditure limits included in this notice apply to Medicaid DSH payment adjustments that are applicable to FFY 1995.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 966–2019.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1902(a)(13)(A) of the Act requires States to ensure that their Medicaid payment rates include payment adjustments for Medicaid-participating hospitals that serve a large number of Medicaid recipients and other low-income individuals with special needs (referred to as disproportionate share hospitals (DSH)). The payment adjustments are calculated on the basis of formulas specified in section 1923 of the Act.

Section 1923(f) of the Act and implementing Medicaid regulations at 42 CFR 447.297 through 447.299 require us to estimate and publish in the **Federal Register** the national target and each State's allotment for DSH payments for each Federal fiscal year (FFY). The implementing regulations provide that the national aggregate DSH limit for a FFY specified in the Act is a target rather than an absolute cap when determining the amount that can be allocated for DSH payments. The national DSH target is 12 percent of the total amount of medical assistance expenditures (excluding total administrative costs) that are projected to be made under approved Medicaid State plans during the FFY. (Note: Whenever the phrases ''total medical assistance expenditures'' or ''total administrative costs'' are used in this notice, they mean both the State and Federal share of expenditures or costs.)

In addition to the national DSH target, there is a specific State DSH limit for each State for each FFY. The State DSH limit is a specified amount of DSH payment adjustments applicable to a FFY above which FFP will not be available. This is called the ''State DSH allotment''.

Each State's DSH allotment for FFY 1995 is calculated by first determining whether the State is a ''high-DSH State,'' or a ''low-DSH State.'' This is determined by using the State's ''base allotment.'' A State's base allotment is the greater of the following amounts: (1) The total amount of the State's actual and projected DSH payment adjustments made under the State's approved State plan applicable to FFY 1992, as adjusted by HCFA; or (2) $1,000,000.

A State whose base allotment exceeds 12 percent of the State's total medical assistance expenditures (excluding administrative costs) projected to be made in FFY 1995 is referred to as a ''high-DSH State.'' The FFY 1995 State DSH allotment for a high-DSH State is limited to the State's base allotment.

A State whose base allotment is equal to or less than 12 percent of the State's total medical assistance expenditures (excluding administrative costs) projected to be made in FFY 1995 is referred to as a ''low-DSH State.'' The FFY 1995 State DSH allotment for a low-DSH State is equal to the State's DSH allotment for FFY 1994 increased by growth amounts and supplemental amounts, if any. However, the FFY 1995 DSH allotment for a low-DSH State cannot exceed 12 percent of the State's total medical assistance expenditures for FFY 1995 (excluding administrative costs).

The growth amount for FFY 1995 is equal to the projected percentage increase (the growth factor) in a low-DSH State's total Medicaid program expenditures between FFY 1994 and FFY 1995 multiplied by the State's final DSH allotment for FFY 1994. Because the national DSH limit is considered a target, low-DSH States whose programs grow from one year to the next can receive a growth amount that would not be permitted if the national limit was viewed as an absolute cap.

There is no growth factor and no growth amount for any low-DSH State whose Medicaid program does not grow (that is, stayed the same or declined) between FFY 1994 and FFY 1995. Furthermore, because a low-DSH State's FFY 1995 DSH allotment cannot exceed 12 percent of the State's total medical assistance expenditures, it is possible for its FFY 1995 DSH allotment to be lower than its FFY 1994 DSH allotment. This occurs when the State experiences a decrease in its program expenditures between years and its prior FFY DSH allotment is greater than 12 percent of the total projected medical assistance expenditures for the current FFY. This is the case for the State of Indiana for FFY 1995.

There is no supplemental amount available for redistribution for FFY 1995. The supplemental amount, if any, is equal to a low-DSH State's proportional share of a pool of funds (the redistribution pool). The redistribution pool is equal to the national 12 percent DSH target reduced by the total of the base allotments for high-DSH States, the total of the State DSH allotments for the previous FFY for low-DSH States, and the total of the low-DSH State growth amounts. Since the sum of these amounts is above the projected FFY 1995 national 12 percent DSH target, there is no redistribution pool and, therefore, no supplemental amounts for FFY 1995.

As prescribed in the law and regulations, no State's DSH allotment will be below a minimum of $1,000,000.

As an exception to the above requirements, under section 1923(f)(1)(A)(i)(II) of the Act and regulations at 42 CFR 447.296(b)(5) and 447.298(f), a State may make DSH payments for a FFY in accordance with the minimum payment adjustments required by Medicare methodology described in section 1923(c)(1) of the Act. The State of Nebraska's final State DSH allotment has been determined in accordance with this exception.

We are publishing in this notice the final FFY 1995 national DSH target and State DSH allotments based on the best available data we received to date from the States, as adjusted by HCFA. These data are taken from each State's actual Medicaid expenditures for FFY 1994 as reported on the State's quarterly expenditure report Form HCFA–64 submissions and the FFY 1995 projected Medicaid expenditures as reported on the February 1995 Form HCFA–37 submission. All data are adjusted as necessary.

II. Calculations of the Final FFY 1995 DSH Limits

The total of the final State DSH allotments for FFY 1995 is equal to the sum of the base allotments for all high-DSH States, the FFY 1994 State DSH allotments for all low-DSH States, and the growth amounts for all low-DSH States. A State-by-State breakdown is presented in section III of this notice.

We classified States as high-DSH or low-DSH States. If a State's base allotment exceeded 12 percent of its total unadjusted medical assistance expenditures (excluding administrative costs) projected to be made under the State's approved plan in FFY 1995, we classified that State as a ''high-DSH'' State. If a State's base allotment was 12 percent or less of its total unadjusted medical assistance expenditures projected to be made under the State's approved State plan under title XIX of the Act in FFY 1995, we classified that State as a ''low-DSH'' State. Based on this classification, there are 34 low-DSH States and 16 high-DSH States for FFY 1995.

Using the most recent data from the States' February 1995 budget projections (Form HCFA–37), we estimate the States' FFY 1995 national total medical assistance expenditures to be $152,830,147,000. Thus, the overall final national FFY 1995 DSH expenditure target is $18,339,618,000 (12 percent of $152,830,147,000).

In the final FFY 1995 State DSH allotments, we provide a total of $644,305,000 ($356,788,000 Federal share) in growth amounts for the 34 low-DSH States. The growth factor percentage for each of the low-DSH States was determined by calculating the Medicaid program growth percentage for each low-DSH State between FFY 1994 and FFY 1995. To compute this percentage, we first ascertained each low-DSH State's total FFY 1994 medical assistance and administrative expenditures as reported on the State's quarterly expenditure reports (Form HCFA–64) for FFY 1994. Next, we compared the FFY 1994 reported expenditures to each low-DSH State's total estimated unadjusted FFY 1995 medical assistance and administrative expenditures as reported to HCFA on the State's February 1995 Form HCFA–37 submission.

The growth factor percentage was multiplied by the low-DSH State's final FFY 1994 DSH allotment amount to establish the State's final growth amount for FFY 1995.

Since the sum of the total of the base allotments for high-DSH States, the total of the State DSH allotments for the previous FFY for low-DSH States, and the growth for low DSH States ($19,084,239,000) is greater than the final FFY 1995 national target ($18,339,618,000), there is no final FFY 1995 redistribution pool.

The low-DSH State's growth amount was then added to the low-DSH State's final FFY 1994 DSH allotment amount to establish the final total low-DSH State DSH allotment for FFY 1995. If a State's growth amount, when added to its final FFY 1994 DSH allotment amount, exceeds 12 percent of its FFY 1995 estimated medical assistance expenditures, the State only receives a partial growth amount that, when added to its final FFY 1994 allotment, limits its total State DSH allotment for FFY 1995 to 12 percent of its estimated FFY 1995 medical assistance expenditures. For this reason, nine of the low-DSH States received partial growth amounts.

As explained above, Indiana's final FFY 1995 DSH allotment is lower than its final FFY 1994 DSH allotment. Also, in accordance with the minimum payment adjustments required by Medicare methodology, Nebraska's FFY 1995 State DSH allotment is $11,000,000.

In summary, the total of all final State DSH allotments for FFY 1995 is $19,084,239,000 ($10,886,177,000 Federal share). This total is composed of the prior FFY's final State DSH allotments ($18,490,099,000) plus growth amounts for all low-DSH States ($644,305,000), minus the amount of reduction in Indiana's FFY 1995 DSH allotment ($50,165,000), plus supplemental amounts for low-DSH States ($0). The total of all final FFY 1995 State DSH allotments is 12.5 percent of the total medical assistance expenditures (excluding administrative costs) projected to be made by these States in FFY 1995. The total of all final DSH allotments for FFY 1995 is $744,621,000 over the FFY 1995 national target amount of $18,339,618,000.

Each State should monitor and make any necessary adjustments to its DSH spending during FFY 1995 to ensure that its actual FFY 1995 DSH payment adjustment expenditures do not exceed its final State DSH allotment for FFY 1995 published in this notice. As the ongoing reconciliation between actual FFY 1995 DSH payment adjustment expenditures and the final FFY 1995 DSH allotments takes place, each State should amend its plan as may be necessary to make any adjustments to its FFY 1995 DSH payment adjustment expenditure patterns so that the State will not exceed its final FFY 1995 DSH allotment.

The FFY 1995 reconciliation of DSH allotments to actual expenditures will take place on an ongoing basis as States file expenditure reports with HCFA for DSH payment adjustment expenditures applicable to FFY 1995. Additional DSH payment adjustment expenditures made in succeeding FFYs that are applicable to FFY 1995 will continue to be reconciled with each State's final FFY 1995 DSH allotment as additional expenditure reports are submitted to ensure that the final FFY 1995 DSH allotment is not exceeded. As a result, any DSH payment adjustment expenditures in excess of the final DSH allotment will be disallowed; and therefore, subject to the normal Medicaid disallowance procedures.

III. Final FFY 1995 DSH Allotments Under Public Law 102–234

Key to Chart

Column	Description
Column A = ...	Name of State.
Column B = ...	Final FFY 1994 DSH Allotments for All States. For a high-DSH State, this is the State's base allotment, which is the greater of the State's FFY 1992 allowable DSH payment adjustment expenditures applicable to FFY 1992, or $1,000,000. For a low-DSH State, this is equal to the final DSH allotment for FFY 1994, which was published in the **Federal Register** on May 2, 1994.

Column	Description
Column C = ...	Growth Amounts for Low-DSH States. This is an increase in a low-DSH State's final FFY 1994 DSH allotment to the extent that the State's Medicaid program grew between FFY 1994 and FFY 1995.
Column D = ...	Final FFY 1995 State DSH Allotments. For high-DSH States, this is equal to the base allotment from column B. For low-DSH States, this is equal to the final State DSH allotments for FFY 1994 from column B plus the growth amounts from column C and the supplemental amounts, if any, from column D.
Column E = ...	High or Low DSH State Designation for FFY 1995. ''High'' indicates the State is a high-DSH State and ''Low'' indicates the State is a low-DSH State, after calculation of the final State DSH allotments.

FINAL FEDERAL FISCAL YEAR 1995 DISPROPORTIONATE SHARE HOSPITAL ALLOTMENTS UNDER PUBLIC LAW 102–234

[Amounts are state and Federal shares; dollars are in thousands (000)]

State	Final FFY 94 DSH allotments for all states	Growth amounts for low DSH states[1]	Final FFY95 state DSH allotments	High or low DSH state designation
A	B	C	D	E
AL	$417,458	Not applicable	$417,458	High.
AK	19,589	1,011	20,600	Low.
AR	3,039	300	3,338	Low.
CA	2,191,451	Not applicable	2,191,451	High.
CO	302,014	Not applicable	302,014	High.
CT	408,933	Not applicable	408,933	High.
DE	5,924	1,145	7,069	Low.
DC	41,039	5,466	46,505	Low.
FL	286,478	47,706	334,183	Low.
GA	382,344	26,799	409,142	Low.
HI	64,078	18,608	82,686	Low.
ID	1,985	100	2,085	Low.
IL	394,993	57,178	452,172	Low.
IN[2]	336,799	Not applicable	286,634	Low.
IA	5,497	623	6,121	Low.
KS	188,935	Not applicable	188,935	High.
KY	264,289	Not applicable	264,289	High.
LA	1,217,636	Not applicable	1,217,636	High.
ME	165,317	Not applicable	165,317	High.
MD	129,543	13,557	143,100	Low.
MA	567,128	8,162	575,289	Low.
MI	617,700	56,305	674,005	Low.
MN	55,394	6,004	61,398	Low.
MS	158,464	24,736	183,200	Low.
MO	731,894	Not applicable	731,894	High.
MT	1,300	42	1,342	Low.
NE[3]	11,000	Not applicable	11,000	Low.
NV	73,560	Not applicable	73,560	High.
NH	392,006	Not applicable	392,006	High.
NJ	1,094,113	Not applicable	1,094,113	High.
NM	15,757	1,546	17,303	Low.
NY	2,831,864	192,007	3,023,871	Low.
NC	389,266	40,840	430,106	Low.
ND	1,155	48	1,203	Low.
OH	566,925	62,999	629,925	Low.
OK	23,568	658	24,225	Low.
OR	25,058	6,356	31,413	Low.
PA	967,407	Not applicable	967,407	High.
RI	94,432	16,470	110,901	Low.
SC	439,759	Not applicable	439,759	High.
SD	1,302	140	1,443	Low.
TN	430,611	Not applicable	430,611	High.
TX	1,513,029	Not applicable	1,513,029	High.

FINAL FEDERAL FISCAL YEAR 1995 DISPROPORTIONATE SHARE HOSPITAL ALLOTMENTS UNDER PUBLIC LAW 102–234—Continued

[Amounts are state and Federal shares; dollars are in thousands (000)]

State	Final FFY 94 DSH allotments for all states	Growth amounts for low DSH states[1]	Final FFY95 state DSH allotments	High or low DSH state designation
A	B	C	D	E
UT	5,514	429	5,943	Low.
VT	26,662	2,419	29,081	Low.
VA	185,746	19,051	204,798	Low.
WA	307,993	28,535	336,527	Low.
WV	121,883	4,211	126,094	Low.
WI	10,881	724	11,605	Low.
WY	1,389	131	1,520	Low.
Total	$18,490,099	$644,305	$19,084,239	

Notes
[1] There was 1 low DSH state which had negative growth and 9 low DSH states which got partial growth up to 12% of FFY 95 MAP.
[2] Due to negative growth, allotment limited to 12% of FFY 95 MAP.
[3] Allotment based upon minimum payment adjustment amount.

IV. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a notice would not have a significant economic impact on a substantial number of small entities. For purposes of a RFA, States and individuals are not considered small entities. However, providers are considered small entities. Additionally, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This notice sets forth no changes in our regulations; rather, it reflects the DSH allotments for each State as determined in accordance with §§ 447.297 through 447.299.

We have discussed the method of calculating the final FFY 1995 national aggregate DSH target and the final FFY 1995 individual State DSH allotments in the previous sections of this preamble. These calculations should have a positive impact on payments to DSHs. Allotments will not be reduced for high-DSH States since we interpret the 12 percent limit as a target. Low-DSH States will get their prior FFY DSH allotments plus their growth amounts.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Assistance Program No. 93.778, Medical Assistance Program)

Dated: June 26, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–22170 Filed 9–7–95; 8:45 am]

BILLING CODE 4120–01–P

Public Health Service

Announcement of Cooperative Agreement With the American School Health Association

AGENCY: Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion.

ACTION: Final notice.

SUMMARY: The Office of Disease Prevention and Health promotion (ODPHP) on behalf of the Interagency Committee on School Health announces the availability of fiscal year (FY) 1995 funds for a sole source cooperative agreement with the American School Health Association (ASHA) to review and synthesize the health and educational effects of school health programs and to set forth the research agenda. Approximately $100,000 will be available in FY 1995 to support this project. This award will begin on or about September 1, 1995, for a 12 month budget period within a project period of up to 2 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

EFFECTIVE DATE: September 30, 1995.

FOR FURTHER INFORMATION CONTACT: Kristine I. McCoy, M.P.H., School Health Coordinator, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, PHS U.S. Department of Health and Human Services, 330 C Street, SW, Room 2132, Washington, DC 20201, Phone: 202–205–8180.

SUPPLEMENTARY INFORMATION: The ODPHP will assist in identifying programs and procedures relevant to the project objectives; collaborate in developing, analyzing, and reviewing material for dissemination; and take responsibility for publication of final products.

The Public Health service (PHS) is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement us related to objectives in nearly all priority areas, particularly those pertaining to school-aged children and youth. (To order a copy of ''Healthy People 2000,'' see the section, ''Where to Obtain Additional Information.'')

Authority

This program is authorized under the Public Health Service Act, section 1701(a)(11).

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products and Public Law 103–227, the Pro-Children's Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which

education, library, day care, health care, and early childhood development services are provided to the children.

Eligible Applicant

Assistance will be provided only to the ASHA. No other applications are solicited. The program announcement and application kit have been sent to ASHA. Eligibility is limited to ASHA because it provides representation from a wide variety of professionals in health, education, and social services around the country who serve children through school health programs or related research. ASHA was created specifically to represent this wide variety of professionals, and is unique in its role as a liaison between the school health community and government and other national organizations. With a current membership of 3500 the ASHA has served as a policy development and capacity building organization for more than 70 years. One of its major objectives is the sharing of information that will support school health programs and protect and improve the well-being of children. Thus, the ASHA membership will benefit directly from a compiled body of knowledge that can be used to improve and create quality school health programs and which helps ASHA affiliated researchers to focus their work on key questions.

The ASHA's commitment to improvement of the health of school-aged children and demonstrated ability to produce and disseminate information accessible to a wide variety of school health professionals are demonstrated by its flagship publication the Journal of School Health whose articles cover all areas of medical and education practice with special application to school health programs, and which circulates in the U.S. and 56 foreign countries. In addition, the ASHA has a long history of special publications including ''Achieving the 1990 Health Objectives for the Nation: Agenda for the Nation's Schools'' and ''Recommendations for Delivery of Comprehensive Primary Health Care to Children and Youth in the School Setting.''

The ASHA has established an advisory panel and a review panel of its members representing graduate academic programs training school health professionals within various disciplines to provide expertise in the planning and conduct of this project. Other professional organizations to which the advisory panel members belong and will serve as agents of for this project include the American Alliance for Health, Physical Education, Recreation and Dance, the American Public Health Association, the Society for the Promotion of Health Education, the Association for the Advancement of Health Education, the International Union on Health Education and Promotion, the American Dietetic Association, and the American School Food Service Association. These organizations will serve as resources for the collection of school health evaluations and will benefit from the dissemination of the final review and synthesis.

Executive Order 12372 Review

This application is not subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Where to Obtain More Information

A copy of ''Healthy People 2000'' (Full Report, stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) referenced in the ''Summary'' may be obtained from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, telephone (202) 512–2250.

Dated: August 22, 1995.

Susanne A. Stoiber,

Acting Deputy Assistant Secretary for Health, (Disease Prevention and Health Promotion/ Health Planning and Evaluation).

[FR Doc. 95–22252 Filed 9–7–95; 8:45 am]

BILLING CODE 4160–17–M

Violent Crime Control and Law Enforcement Act of 1994; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services under Section 318—Demonstration Grants for Community Initiatives (42 U.S.C. 10418), of the Family Violence Prevention and Services Act as added by Section 40261 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), as amended hereafter. This delegation excludes the authority to promulgate regulations and to submit reports to the Congress.

This delegation became effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Assistant Secretary for Health or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: August 29, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–22251 Filed 9–7–95; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–53]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1998 Court Order in *National Coalition for the Homeless v. Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been

reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave. SW, Washington, DC 20585; (202) 586–1191; GSA: Ed Guilford, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 501–2059; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW, Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; (These are not toll-free numbers).

Dated: September 1, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 09/08/95

Suitable/Available Properties

Buildings (by State)

Alaska

144 Family Housing Facilities
Naval Air Facility
Adak AK 93555–
Location: 504 units which are two story each
Landholding Agency: Navy
Property Number: 779520014
Status: Excess
Comment: 800–1000 sq. ft. ea., wood frame w/aluminum siding, off-site removal only, ea. unit weighs 50–85 tons, some need rehab, removal via marine transp., 78 units may have Federal need.

Hawaii

Bldg. S87, Radio Trans. Fac.
Lualualie, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779240011
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 466, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779240012
Status: Unutilized
Comment: 100 sq ft., 1-story, needs rehab, most recent use—gas station, off-site use only.

Bldg. T33 Radio Trans Facility Naval Computer & Telecommunications Area.
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310003
Status: Unutilized
Comment: 15365 sq. ft., 1-story, access restrictions, needs rehab, most recent use—storage, off-site only

Bldg. 64, Radio Trans Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310004
Status: Unutilized Comment: 3612 sq. ft., 1-story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Maine

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick Co.: Cumberland ME 04053–
Landholding Agency: Navy
Property Number: 779010110
Status: Unutilized Comment: 7270 sq. ft., 1-story bldg, most recent use—storage, structural deficiencies.

Bldg. 373, Topsham Annex
Naval Air Station
Topsham Co.: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779320024
Status: Excess Comment: 1300 sq. ft., 1-story, most recent use—public works maintenance shop, on 2.55 acres.

Michigan

Little Rapids Lightkeeper Sta.
Little Rapids Channel
Sault St. Marie Co: Chippewa MI 49873–
Landholding Agency: GSA
Property Number: 549530002
Status: Excess Comment: 1411 sq. ft. wood frame dwelling with 480 sq. ft. garage, and 121 sq. ft. storage bldg., poor condition, needs rehab, possible asbestos.
GSA Number: 2–D–MI–722A

Pennsylvania

Naval Reserve Center
Dalton Ave. & Mayfair St.
McKeesport Co.: Allegheny PA 15132–
Landholding Agency: Navy
Property Number: 779520034
Status: Excess Comment: 3 interconnected quonset huts, need rehab, possible lead paint, lease restrictions, off-site removal only.

Land (by State)

Georgia

Naval Submarine Base
Grid R–2 to R–3 to V–4 to V–1
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010229
Status: Underutilized Comment: 111.57 acres; areas may be environmentally protected; secured area with alternate access.

Missouri

FAA VORTAC Swiss Site
Co: Gasconade MO 65041–
Landholding Agency: GSA
Property Number: 549530001
Status: Excess
Comment: 26.5 acres, potential utilities.
GSA Number: 7–W–MO–627

Texas

Peary Point #2
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5000

Landholding Agency: Navy
Property Number: 779030001
Status: Excess
Comment: 43.48 acres; 60% of land under lease until 8/93.
GSA Number: 7–N–TX–402–V

Suitable/Unavailable Properties

Buildings (by State)

Colorado

Ft. Morgan Service Bldg.
Ft. Morgan Co: Morgan CO 80701–
Landholding Agency: Energy
Property Number: 419520002
Status: Excess
Comment: 132 sq. ft., metal substation bldg. on concrete slab.

Maine

Bldg. 376, Naval Air Station
Topsham Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779320011
Status: Unutilized
Comment: 4530 sq. ft., 2-story, most recent use—quarters, needs rehab.

Maryland

Bldg. 230
Naval Communication Detachment
9190 Commo Road
Cheltenham Co: Prince Georges MD 20397–5520
Landholding Agency: Navy
Property Number: 779330010
Status: Unutilized
Comment: 12,384 sq. ft., 4-story, needs rehab, potential utilities, includes 37 acres of land.

Ohio

Naval & Marine Corps Res. Cntr
315 East LaClede Avenue
Youngstown OH
Landholding Agency: Navy
Property Number: 779320012
Status: Unutilized
Comment: 3067 sq. ft. 2-story, possible asbestos.

Texas

Bldg. 2435
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010161
Status: Underutilized
Comment: 1730 sq. ft.; 1 story residence.

Bldg. 2436
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010162
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2460
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010163
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2462
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010164
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2464
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010165
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2466
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010166
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2467
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010167
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2468
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010168
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2472
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010169
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2476
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010170
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2482
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010171
Status: Underutilized
Comment: 1760 sq. ft.; 1 story residence.

Bldg. 2495
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010172
Status: Underutilized
Comment: 1760 sq. ft.; 1 story residence.

Bldg. 2514
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010173
Status: Underutilized
Comment: 1730 sq. ft.; 1 story residence.

Bldg. 2518
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010174
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2520
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010175
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2522
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010176
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2526
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010177
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2423
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010178
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2427
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010179
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2431
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010180
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2424
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010181
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2433
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy

Property Number: 779010182
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2428
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010183
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2429
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010184
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2454
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010185
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2477
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010186
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2485
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010187
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2499
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010188
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2503
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010189
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2507
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010190
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2513
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010191
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2521
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010192
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2451
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010193
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2458
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010194
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2461
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010195
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2473
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010196
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2478
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010197
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2480
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010198
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2484
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010199
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2486
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010200
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2487
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010201
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2488
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010202
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2494
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010203
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2500
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010204
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2502
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010205
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2506
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010206
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2508
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010207
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2525
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010208
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2452
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010209
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2475
Laguna Housing Area
NAS Corpus Christi

Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010210
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2479
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010211
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2497
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010212
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2501
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010213
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2505
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010214
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2515
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010215
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2517
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010216
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2519
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010217
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2523
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010218
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2465
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010219
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2493
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010220
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2510
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010221
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2474
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010222
Status: Underutilized
Comment: 3528 sq. ft.; 1 story residence.

Bldg. 2481
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010223
Status: Underutilized
Comment: 3528 sq. ft.; 1 story residence.

Bldg. 2509
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010224
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2511
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010225
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2512
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010226
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2527
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010227
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Virginia

Naval Medical Clinic
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508–
Landholding Agency: Navy
Property Number: 779010109
Status: Underutilized
Comment: 3665 sq. ft.; 1 story, possible asbestos, most recent use—laundry.

West Virginia

Naval & Marine Corps Res. Ctr.
N. 13th St & Ohio River
Wheeling Co: Ohio WV 26003–
Landholding Agency: Navy
Property Number: 779010077
Status: Excess
Comment: 32000 sq. ft.; 1 floor; most recent use—offices; 15% of total space occupied; needs rehab; land leased from city—expires September 1990.

Land (by State)

Florida

Naval Public Works Center
Naval Air Station
Pensacola Co: Escambia FL 32508–
Location: Southeast corner of Corey station—next to family housing.
Landholding Agency: Navy
Property Number: 779010157
Status: Unutilized
Comment: 22 acres.

Georgia

Naval Submarine Base
Grid AA–1 to AA–4 to EE–7 to FF–2
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010255
Status: Underutilized
Comment: 495 acres; 86 acre portion located in floodway; secured area with alternate access.

Virginia

Naval Base
Norfolk Co: Norfolk VA 23508–
Location: Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 779010156
Status: Unutilized
Comment: 60 acres; most recent use—sandpit; secured area with alternate access.

Suitable/To Be Excessed

Buildings (by State)

California

Bldg. 100
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010259
Status: Unutilized
Comment: 2628 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; use—office space.

Bldg. 102
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010260
Status: Unutilized
Comment: 580 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—office.

Bldg. 103
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–

Landholding Agency: Navy
Property Number: 779010261
Status: Unutilized
Comment: 3675 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—dining hall.

Bldg. 109
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010262
Status: Unutilized
Comment: 1045 sq. ft.; 2 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—barracks.

Bldg. 110
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010263
Status: Unutilized
Comment: 4439 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—shop.

Bldg. 113
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010264
Status: Unutilized
Comment: 100 sq. ft.; 1 story permanent bldg; secure facilities with alternate access; most recent use—storage.

Bldg. 138
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010265
Status: Unutilized
Comment: 110 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—filling station.

Bldg. 144
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010266
Status: Unutilized
Comment: 4320 sq. ft.; 1 story semi-permanent bldg; possible asbestos; secure facility with alternate access; most recent use—bowling alley.

Bldg. 145
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010267
Status: Unutilized
Comment: 4000 sq. ft.; 1 story semi-permanent bldg; possible asbestos; secure facility with alternate access; most recent use—recreation building.

Land (by State)

Illinois

Libertyville Training Site
Libertyville Co: Lake IL 60048–
Landholding Agency: Navy
Property Number: 779010073
Status: Excess
Comment: 114 acres; possible radiation hazard; existing FAA use license.

Michigan

Marine Corps Reserve Center
3109 Collingwood Parkway
Flint MI 48502–
Landholding Agency: Navy
Property Number: 779240019
Status: Excess
Comment: 5 acres, previously had four bldgs. on it.

North Dakota

Trailer Lots 1–6
Stromquist 1st Addition
Devils Lake Co: Ramsey ND 58301–
Landholding Agency: Energy
Property Number: 419530001
Status: Excess
Comment: 45720 sq. ft. in trailer park.

Unsuitable Properties

Buildings (by State)

Alaska

Sand Shed, Map Grid 45024
Naval Public Works Center
Naval Air Station
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779120004
Status: Unutilized
Reason: Secured Area

LORAN Station, Map Grid 09L11
Naval Air Station
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779120006
Status: Unutilized
Reason: Secured Area

Bldg. 10196
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310021
Status: Unutilized
Reason: Secured Area

Bldg. 10517
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310022
Status: Unutilized
Reason: Secured Area

Bldg. 10518
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310023
Status: Unutilized
Reason: Secured Area

Bldg. 10535
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310024
Status: Unutilized
Reason: Secured Area

Bldg. 10538
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310025
Status: Unutilized
Reason: Secured Area

Bldg. 10539
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310026
Status: Unutilized
Reason: Secured Area

Bldg. 10540
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310027
Status: Unutilized
Reason: Secured Area

Bldg. 10603
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310028
Status: Unutilized
Reason: Secured Area

Generator Bldg.
Naval Security Group Activity
Adak Island AK
Landholding Agency: Navy
Property Number: 779430017
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Arizona

Inn Cabin #9
North Rim Grand Canyon
Grand Canyon Co: Coconino AZ 86023–
Landholding Agency: Interior
Property Number: 619530013
Status: Unutilized
Reason: Extension deterioration

California

Bldg. 105
Naval FPS, CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010159
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 165
Naval FPS, CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010160
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 146
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010268
Status: Unutilized
Reason: Other
Comment: sewer treatment facility

Bldg. 31104
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–
Landholding Agency: Navy
Property Number: 779340003
Status: Unutilized
Reason: Secured Area

Bldg. 31107
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–
Landholding Agency: Navy
Property Number: 779420001
Status: Unutilized
Reason: Secured Area

Bldg. 15951
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779430006
Status: Unutilized
Reason: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material

Bldg. 31539
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–
Landholding Agency: Navy
Property Number: 779430016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 00366
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520001
Status: Excess
Reason: Secured Area

Bldg. 00405
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520002
Status: Excess
Reason: Secured Area

Bldg. 00418
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520003
Status: Excess
Reason: Secured Area

Bldg. 00421
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520004
Status: Excess
Reason: Secured Area

Bldg. 00426
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520005
Status: Excess
Reason: Secured Area

Bldg. 00427
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520006
Status: Excess
Reason: Secured Area

Bldg. 00429
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520007
Status: Excess
Reason: Secured Area

Bldg. 00430
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520008
Status: Excess
Reason: Secured Area

5 Bldgs.
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Location: Include: #'s 00360, 00415, 00419, 00423, 00414
Landholding Agency: Navy
Property Number: 779520009
Status: Excess
Reason: Secured Area

5 Bldgs.
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Location: Include: #'s 00428, 00359, 00362, 00369, 00409
Landholding Agency: Navy
Property Number: 779520010
Status: Excess
Reason: Secured Area

5 Bldgs.
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Location: Include: #'s 00367, 00416, 00425, 00365, 00368
Landholding Agency: Navy
Property Number: 779520011
Status: Excess
Reason: Secured Area

4 Bldgs.
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Location: Include: #'s 00370, 00371, 00385, 00404
Landholding Agency: Navy
Property Number: 779520012
Status: Excess
Reason: Secured Area

4 Bldgs.
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Location: Include: #'s 00412, 00433, 00434, 00435
Landholding Agency: Navy
Property Number: 779520013
Status: Excess
Reason: Secured Area

Bldgs. 31030, 31031 & 31034
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779520015
Status: Excess
Reason: Secured Area Within 2000 ft. of flammable or explosive material

Bldg. 481
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520018
Status: Unutilized
Reason: Secured Area

Bldg. 482
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520019
Status: Excess
Reason: Secured Area

Bldg. 356
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520020
Status: Excess
Reason: Secured Area

Bldg. 361
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520021
Status: Excess
Reason: Secured Area

Bldg. 364
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520022
Status: Excess
Reason: Secured Area

Bldg. 373
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520023
Status: Excess
Reason: Secured Area

Bldg. 407
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520024
Status: Excess
Reason: Secured Area

Bldg. 413
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520025
Status: Excess
Reason: Secured Area

Bldg. 366
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520026
Status: Unutilized
Reason: Secured Area

Bldg. 432
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520027
Status: Excess
Reason: Secured Area

Bldg. 372
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520028
Status: Excess
Reason: Secured Area

Bldg. 417
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520029
Status: Excess
Reason: Secured Area

Bldg. 422
Naval Air Weapons Station, China Lake

China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520030
Status: Excess
Reason: Secured Area

Bldg. 424
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520031
Status: Excess
Reason: Secured Area

Colorado

Bldg. 100
Rocky Flats
Golden Co: Jefferson CO 80402–
Landholding Agency: Energy
Property Number: 419530003
Status: Unutilized
Reason: Secured Area Within 2000 ft. of flammable or explosive material

Bldg. 900
Rocky Flats
Golden Co: Jefferson CO 80402–
Landholding Agency: Energy
Property Number: 419530004
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material

Connecticut

Bldgs. 25 and 26
Prospect Hill Road
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 419440003
Status: Excess
Reason: Secured Area

Naval Housing—7 Bldgs.
Naval Submarine Base
New London Co: Groton CT
Landholding Agency: Navy
Property Number: 779510001
Status: Unutilized
Reason: Secured Area

Florida

East Martello Bunker #1
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010101
Status: Excess
Reason: Within airport runway clear zone

Georgia

Naval Submarine Base-Kings Bay
1011 USS Daniel Boone Avenue
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010107
Status: Unutilized
Reason: Secured Area

Guam

Bldg. 96
U.S. Naval Ship Repair Facility
PSC 455 Co: Box 191, FPO AP GU 96540–1400
Landholding Agency: Navy
Property Number: 779240018
Status: Underutilized
Reason: Extensive deterioration

Hawaii

Bldg. 126, Naval Magazine
Waikele Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230012
Status: Underutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material, Other
Comment: Extensive deterioration

Bldg. Q75, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230013
Status: Underutilized
Reason: Secured Area, Other
Comment: Extensive deterioration

Bldg. 7, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230014
Status: Underutilized
Reason: Secured Area, Other
Comment: Extensive deterioration

Facility 189, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310045
Status: Underutilized
Reason: Extensive deterioration, Secured Area

Facility 342, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310046
Status: Underutilized
Reason: Extensive deterioration, Secured Area

Facility 343, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310047
Status: Underutilized
Reason: Extensive deterioration, Secured Area

Facility S6194
Naval Air Facility
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310048
Status: Underutilized
Reason: Extensive deterioration, Secured Area

Facility S7124
Naval Air Facility
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310049
Status: Underutilized
Reason: Extensive deterioration, Secured Area

Facility 5985
Naval Station Pearl Harbor
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779310086
Status: Excess
Reason: Extensive deterioration

Bldg. 6, Pearl Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 10, Pearl Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 93, Naval Station
Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779440027
Status: Unutilized
Reason: Extensive deterioration

Bldg. 7
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 8
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 10
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 11
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 12
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 13
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 14
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510009

Status: Unutilized
Reason: Extensive deterioration

Bldg. 15
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510010
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510011
Status: Unutilized
Reason: Extensive deterioration

Bldg. 40
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510012
Status: Unutilized
Reason: Extensive deterioration

Bldg. 43
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510013
Status: Unutilized
Reason: Extensive deterioration

Bldg. 44
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510014
Status: Unutilized
Reason: Extensive deterioration

Bldg. 45
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510015
Status: Unutilized
Reason: Extensive deterioration

Bldg. 46
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510016
Status: Unutilized
Reason: Extensive deterioration

Bldg. 101
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510017
Status: Unutilized
Reason: Extensive deterioration

Illinois

Bldg. 605
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419440001
Status: Excess
Reason: Extensive deterioration

Bldg. 24
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419510001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 25
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419510002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 822
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419510003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 823
Argonne National Laboratory
Argonne Co: DuPage Il 60439–
Landholding Agency: Energy
Property Number: 419510004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 928
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010120
Status: Unutilized
Reason: Secured Area

Bldg. 928
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010123
Status: Unutilized
Reason: Secured Area

Bldg. 25
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010126
Status: Unutilized
Reason: Secured Area

South Wing—Building No. 62
Great Lakes Co: Lake IL 60088–5000
Landholding Agency: Navy
Property Number: 779110001
Status: Unutilized
Reason: Secured Area

Bldg. 235
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310039
Status: Unutilized
Reason: Secured Area

Bldg. 2B
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310040
Status: Unutilized
Reason: Secured Area

Bldg. 90
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310041
Status: Unutilized
Reason: Secured Area

Bldg. 232
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310042
Status: Unutilized
Reason: Secured Area

Bldg. 233
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310043
Status: Unutilized
Reason: Secured Area

Bldg. 234
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310044
Status: Unutilized
Reason: Secured Area

Maine

Bldg. 293, Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779240015
Status: Excess
Reason: Secured Area

Bldg. 384
Naval Air Station Topsham
Brunswick Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779340001
Status: Unutilized
Reason: Extensive deterioration

New Mexico

Bldgs. 9252, 9268
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 419430002
Status: Unutilized
Reason: Extensive deterioration

New Mexico

Bldg. 93
Brookhaven National Laboratory,
Upton Co: Suffolk NY 11973–
Landholding Agency: Energy
Property Number: 419510006
Status: Unutilized
Reason: Extensive deterioration

North Carolina

Bldg. SH–7
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410017
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. SH–11
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410018
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. SH–13
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410019
Status: Unutilized

Reason: Secured Area, Extensive deterioration

Bldg. SH–16
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410020
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. SH–17
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410021
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. SH–21
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410022
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. SH–31
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410023
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. SSH–10
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410024
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS–209
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410025
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS–589
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410026
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS–590
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410027
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS–4138
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410028
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS–4139
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410029
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 867
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410030
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 939
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410031
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 940
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410032
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. H–38
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410033
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. SM–173
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410034
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1744
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410035
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. PT–42
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420002
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. S–93
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420003
Status: Unutilized
Reason: Secured Area

Bldg. TC–910
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420004
Status: Unutilized
Reason: Extensive deterioration

Bldg. S–942
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420005
Status: Unutilized
Reason: Extensive deterioration

Bldg. S–1213
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 79
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420008
Status: Excess
Reason: Secured Area

Bldg. 281
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420009
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 282
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420010
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 88
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420011
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 98
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420012
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 99
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420013
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1234
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420014
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1235

Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420015
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1246
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420016
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1390
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420017
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1710
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420018
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1742
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420019
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1743
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420020
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1744
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420021
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1745
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420022
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 3450
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420023
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 8067
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420024
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 3546
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420025
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 9017
Piney Island
Marine Corps Air Station
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430001
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 9019
Piney Island
Marine Corps Air Station
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430002
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 9021
Piney Island
Marine Corps Air Station
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430003
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 9023
Piney Island
Marine Corps Air Station
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430004
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 9035
Piney Island
Marine Corps Air Station
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430005
Status: Unutilized
Reason: Extensive deterioration

Structure #AS582
New River Air Station
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430015
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS–299, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430020
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 854, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430021
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 883, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430022
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. TC–174, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430023
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. TC–179, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430024
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 935, Cherry Point
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779430025
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Facility 1972, Cherry Point
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779430026
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 3248, Cherry Point
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779440009
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS 552, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440010
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS 587, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440011
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. TT 38, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440012
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 49, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy

Property Number: 779440013
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS 147, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440014
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. BB 166, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440015
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. SM 183, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440016
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. BB 222, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440017
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 451, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440018
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 630, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440019
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. S 745, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440020
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 805, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440021
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS 866, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440022
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 954, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440023
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1808, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440024
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1810, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440025
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Structure #SVL 142
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510021
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Structure #FC 363
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510022
Status: Unutilized
Reason: Secured area,

Structure #AS 583
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510023
Status: Unutilized
Reason: Secured Area

Structure #1966
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510024
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Structure #2322
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510025
Status: Unutilized
Reason: Secured Area

Structure RR–85
Camp Lejeune Base Rifle Range
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779520016
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Structure SRR–86
Camp Lejeune Base Rifle Range
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779520017
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Ohio

Bldg. 16
RMI Environmental Services
Ashtabula Co: Ashtabula OH 44004–
Landholding Agency: Energy
Property Number: 419440002
Status: Excess
Reason: Other
Comment: Contamination: radioactive materials

Rhode Island

Bldg. 32
Naval Underwater Systems Center
Gould Island Annex
Middletown Co: Newport RI 02840–
Landholding Agency: Navy
Property Number: 779010273
Status: Excess
Reason: Secured Area

South Dakota

Bldg.—Huron Airport Hangar
Huron Regional Airport
Huron Co: Beadle SD 57350–
Landholding Agency: Energy
Property Number: 419510005
Status: Unutilized
Reason: Within airport runway clear zone

Texas

Bldg. 2426
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010279
Status: Underutilized
Reason: Floodway

Bldg. 2432
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010280
Status: Underutilized
Reason: Floodway

Bldg. 2476
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010281
Status: Underutilized
Reason: Floodway

Bldg. 2498
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010282
Status: Underutilized
Reason: Floodway

Bldg. 2504
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010283
Status: Underutilized
Reason: Floodway

Bldg. 1730
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010284
Status: Underutilized
Reason: Floodway

Bldg. 2422
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010285
Status: Underutilized
Reason: Floodway

Bldg. 2425
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–

Landholding Agency: Navy
Property Number: 779010286
Status: Underutilized
Reason: Floodway

Bldg. 2430
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010287
Status: Underutilized
Reason: Floodway

Bldg. 2434
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010288
Status: Underutilized
Reason: Floodway

Bldg. 2449
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010289
Status: Underutilized
Reason: Floodway

Bldg. 2450
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010290
Status: Underutilized
Reason: Floodway

Bldg. 2453
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010291
Status: Underutilized
Reason: Floodway

Bldg. 2455
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010292
Status: Underutilized
Reason: Floodway

Bldg. 2456
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010293
Status: Underutilized
Reason: Floodway

Bldg. 2463
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010294
Status: Underutilized
Reason: Floodway

Bldg. 2483
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010295
Status: Underutilized
Reason: Floodway

Bldg. 2516
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010296
Status: Underutilized
Reason: Floodway

Bldg. 2524
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010297
Status: Underutilized
Reason: Floodway

Bldg. 2528
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010298
Status: Underutilized
Reason: Floodway

Virginia

Bldg. 63
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520035
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 244
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520036
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 286
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520037
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 416
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520038
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 521
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520039
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 539
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520040
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 760
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520041
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area; Extensive deterioration

Bldg. 763
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520042
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1335
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520043
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1488
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520044
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Washington

Bldg. 57
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010091
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 47 (Report 1)
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010230
Status: Underutilized
Reason: Secured Area

Bldg. 14
Naval Undersea Warfare Center Div., Keyport
Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 779440001
Status: Underutilized
Reason: Secured Area

Bldg. 39
Naval Undersea Warfare Center Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 779510020
Status: Underutilized
Reason: Secured Area, Extensive deterioration

Land (by State)

California

Naval Air Station, Miramar
San Diego Co: San Diego CA 92145–5005
Landholding Agency: Navy
Property Number: 779440026
Status: Underutilized
Reason: Within airport runway clear zone
Other
Comment: Inaccessible

Florida

Boca Chica Field
Naval Air Station
Key West Co: Monroe FL 23040–
Landholding Agency: Navy
Property Number: 779010097
Status: Underutilized
Reason: Floodway

East Martello Battery #2

Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010275
Status: Excess
Reason: Within airport runway clear zone

Georgia

Naval Submarine Base
Grid G–5 to G–10 to Q–6 to P–2
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010228
Status: Underutilized
Reason: Secured Area

Maryland

5,635 sq. ft. or Land
Solomon's Annex
Solomon's MD
Landholding Agency: Navy
Property Number: 779230001
Status: Excess
Reason: Other
Comment: Drainage Ditch

Puerto Rico

Destino Tract
Eastern Maneuver Area
Vieques PR 00765–
Landholding Agency: Navy
Property Number: 779240016
Status: Excess
Reason: Other
Comment: Inaccessible

Punta Figueras—Naval Station
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 779240017
Status: Excess
Reason: Floodway

Washington

Land (Report 2), 234 acres
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010231
Status: Unutilized
Reason: Secured Area

[FR Doc. 95–22245 Filed 9–7–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of land Management

[AK–962–1410–00–P; AA–6664–C, AA–6664–D, AA–6664–A2]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to the English Bay Corporation for approximately 16,305.62 acres. The lands involved are in the vicinity of the Kenai Fjords, Alaska.

Seward Meridian, Alaska

U.S. Survey No. 4779,
T. 5 S., R. 3 W.,
T. 5 S., R. 4 W,
T. 7 S., R. 7 W.,
T. 7 S., R. 8 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Seward Phoenix Log. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 10, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia K. Underwood,

Acting Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 95–22301 Filed 9–7–95; 8:45 am]

BILLING CODE 4310–JA–P

[AZ–040–05–1040–00]

Notice of Meeting for the Gila Box Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR 1780 that a meeting of the Gila Box Riparian National Conservation Area (NCA) Advisory Committee will be held.

DATES: September 28, 1995, 9:00 a.m.—4:00 p.m., Safford District Office.

ADDRESSES: BLM Safford District Office, 711 14th Ave., Safford, Arizona.

SUPPLEMENTARY INFORMATION: The NCA Advisory Committee was established by Arizona Desert Wilderness Act of 1990 to provide input to the Safford District on management of the Gila Box Riparian National Conservation Area (NCA). The Committee is continuing work on the Gila Box Interdisciplinary Activity Plan, which will be completed by December 1995.

The agenda for the meeting includes: (1) refine management actions; (2) finalize preferred alternative.

All meetings are open to the public. Interested persons may make oral statements to the Committee between 10:30 and 11:00 a.m. or may file written statements for consideration by the Committee. Anyone wishing to make an oral statement must contact the BLM Gila Resource Area Manager at least two working days prior to the meeting. (Written statements are also accepted at any time during preparation of the draft plan, and will be reviewed by the committee.)

Statements should be mailed to Elmer Walls, Team Leader, Gila Resource Area, 711 14th Ave., Safford, Arizona 85546.

Summary minutes of the meeting will be maintained in the Safford District Office and will be available for public inspection (during regular business hours) within 30 days after each meeting.

FOR FURTHER INFORMATION CONTACT: Meg Jensen, Gila Resource Area Manager, or Elmer Walls, Team Leader, 711 14th Ave., Safford, Arizona 85546, Telephone (520) 428–4040.

Dated: August 29, 1995.

William T. Civish,

District Manager.

[FR Doc. 95–22262 Filed 9–7–95; 8:45 am]

BILLING CODE 4310–32–M

[NM–070–1430–01; NMNM 71324]

Issuance of Exchange Conveyance Document; New Mexico.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 39.22 acres of public land out of Federal ownership and the reconveyance of 90.06 acres of land into Federal ownership.

FOR FURTHER INFORMATION CONTACT: Farmington District Manager, 1235 La Plata Highway, Farmington, New Mexico 87401.

SUPPLEMENTARY INFORMATION: The United States issued an exchange conveyance document to Donald G. Myer and Edith Myer and Chalmer R. Myer and Norma Jean Meyer on November 8, 1993, for the surface estate in the following described land in San Juan County, New Mexico, pursuant to Sections 502 and 504 of the Chaco National Historic Park Act of December 19, 1980 (94 Stat. 3221).

New Mexico Principal Meridian

T. 30 N., R. 12 W.,
Sec. 19, lot 4.
Containing 39.22 acres.

In exchange for the land described above, Donald G. and Edith Myer and Chalmer R. and Norma Jean Myer conveyed to the United States of America the surface estate in the following described land located in San Juan County, New Mexico. Also, the State of New Mexico donated to the United States of America 33.00 acres of land (surface estate), and an access road easement in San Juan County, New Mexico described as follows:

New Mexico Principal Meridian

T. 32 N., R. 13 W., sec. 15, a tract of land in the E½SW¼ and W½SE¼ (described by metes and bounds).
Containing 90.06 acres.

The purpose of the exchange was to acquire and protect cultural resources of national significance. The acquired land offers high public values for cultural resources. The acquired land is closed to the public except by authorized personnel.

The values of the Federal public land was $86,284.00 and the non-Federal land exchanged was $139,090.00. The donated land and easement by the State of New Mexico was appraised at $37,000.00. An equalization payment of $15,806.00 was made to the Myers. The public interest was served through the completion of this exchange.

William C. Calkins,

State Director,

Dated: August 28, 1995.

[FR Doc. 95–22321 Filed 9–7–95; 8:45 am]

BILLING CODE 4310–FB–P

Bureau of Land Management

[CA–018–1220–00]

Recreation Management; Final Supplementary Rules; California

ACTION: Final Supplementary Rules.

SUMMARY: Establishment of supplementary rules for the management of public lands along the Middle Fork of the Consumnes River, Folsom Resource Area, Bakersfield District, California. The following rules shall apply to public land located adjacent to Mt. Aukum Road, El Dorado County, California; specifically, Township 9 North, Range 12 East, section 19 and Township 9 North, Range 11 East, section 24 of the Mt. Diablo meridian.

1. No person shall camp overnight. Camp overnight is defined as the use, construction, or taking possession of public lands using tents, shacks, lean-tos, vehicles, huts, blankets, or sleeping bags.

2. No person shall build, attend, maintain, or use a campfire. Campfire is defined as a controlled fire occurring out of doors, used for cooking, branding, personal warmth, lighting, ceremonial, or aesthetic purposes.

3. No person shall possess or consume alcoholic beverages. Alcoholic beverages are defined as beer, wine, distilled spirits, or any other beverage as defined as such by California law.

4. No person shall enter the area or park a motor vehicle between the hours of 10 o'clock pm and 6 o'clock am. Persons driving through the area on the road are exempt.

Any person who fails to comply with these supplementary rules may be subject to fines of up to $100,000 and/or imprisonment not to exceed 12 months. These penalties are specified by Title 43 of the United States Code, section 303 and Title 18 of the United States Code, section 3623.

Federal, State, and local law enforcement officers and emergency services personnel, while performing official duties, are exempt from these supplementary rules.

DATES: These final rules will be in effect on September 8, 1995 and be in effect until rescinded or modified.

FOR FURTHER INFORMATION CONTACT: Deane K. Swickard, 63 Natoma Street, Folsom, Ca. 95630, Telephone 916–985–4474.

SUPPLEMETARY INFORMATION: This area has a history of an unusual number of law enforcement incidents. Both the BLM and the El Dorado Sheriff's Department receives a large number of complaints from the public concerning activities occurring in this area. These activities became such a concern to the adjacent residents that they organized a public meeting with county and BLM officials. The purpose of these rules are to allow appropriate use of the public lands and provide for the protection of the public and the resources. These rules were published as proposed rulemaking in the **Federal Register** dated July 20, 1995. No comments were received.

Authority for supplementary rules is contained in Title 43 of the Code of Federal Regulations, subpart 8364.1.

D. K. Swickard,

Resource Area Manager.

[FR Doc. 95–22323 Filed 9–7–95;8:45 am]

BILLING CODE 4310–40–M

[CA–050–05–1610–00]

Proposed Designation of Areas of Critical Environmental Concern (ACEC) for the Arcata Planning Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to designate seven (7) Areas of Critical Environmental Concern (ACECs) as part of the Proposed Amendment to the Arcata Resource Management Plan. The ACECs include: Lack's Creek watershed ACEC, 2978 acres; South Fork Eel River Watershed ACEC, 10,784 acres; Lacks Creek RNA/ACEC, 1520 acres; Red Mountain RNA/ACEC, 6895 acres; Elder Creek RNA/ACEC, 3,775 acres; Gilham Butte RNA/ACEC, 2,550 acres; and the Iaqua Butte RNA/ACEC, 1080 acres.

Resource use limitations associated with the above ACEC proposals would be the same as described for Late-Successional Reserve (LSR) management contained in the Northwest Forest Plan Record of Decision (1994).

In order to be a potential ACEC, an area must satisfy the criteria of relevance and importance, consistent with the regulations, 43 CFR 1610.7–2.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, Area Manager, at Bureau of Land Management, Arcata Resource Area, 1695 Heindon Road, Arcata, CA 95521–4573. Telephone: (707) 825–2300.

SUPPLEMENTARY INFORMATION: The proposed ACECs are discussed in the *Arcata Planning Area Proposed Resource Management Plan Amendment and Environmental Assessment, March 1995*. There will be a 60-day comment period on the proposed ACEC's beginning with the publication of this notice. Public comments must be in writing and mailed to the above address. Following this 60–day comment period, action will be taken by the California State Director to approve or disapprove the proposed ACECs. Approval of the proposed Arcata RMP Amendment by the California State Director will constitute formal designation of these ACECs.

Daniel E. Averill,

Acting Arcata Area Manager.

[FR Doc. 95–22260 Filed 9–7–95; 8:45 am]

BILLING CODE 4310–40–M

[OR–942–00–1420–00: G5–206]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 16 S., R. 2 E., accepted August 1, 1995;
T. 1 N., R. 6 E., accepted July 24, 1995;
T. 2 N., R. 6 E., accepted July 24, 1995;
T. 30 S., R. 7 W., accepted July 18, 1995;
T. 13 S., R. 7 W., accepted July 17, 1995;
T. 10 S., R. 11 W., accepted July 14, 1995;
T. 31 S., R. 14 W., accepted August 11, 1995;
T. 37 S., R. 14 W., accepted August 8, 1995.

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 SW., 5th Avenue,) P.O. Box 2965, Portland, Oregon 97208.

Dated: August 28, 1995.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–22259 Filed 9–7–95; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–805282

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to export one captive-born female grey wolf (*Canis lupus lycaon*) to the Seoul Grand Park Zoo, Seoul Korea, for the purpose of enhancement of the survival of the species through propagation and conservation education.

PRT–805801

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to export one captive-born female grey wolf (*Canis lupus lycaon*) to the Akita Omoriyama Zoo, Akita City, Japan, for the purpose of enhancement of the survival of the species through propagation and conservation education.

PRT–806242

Applicant: Michael Wilmet, Long Grove, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by M.G. Wienand at Longwood, Bedford, Cape Province, South Africa for the purpose of enhancement of the survival of the species.

PRT–806340

Applicant: St. Louis Zoological Park, St. Louis, MO.

The applicant requests a permit to import four pairs of captive-held black and white ruffed lemur (*Varecia variegata variegata*) from Parc Zoologique Ivoloina, Madagascar for placement in SSP institutions for the purpose of enhancement through captive propagation.

PRT–805879

Applicant: Eugene M. Bishop, Roswell, GA.

The applicant requests a permit to import the sport-hunted trophy of one bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Mr. Luke Kock, Verborgenfontein, Richmond, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 1, 1995.

Mary Ellen Amtower,

Acting Chief Branch of Permits, Office of Management Authority.

[FR Doc. 95–22247 Filed 9–7–95; 8:45 am]

BILLING CODE 4310–55–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub-No. 1146X)]

Consolidated Rail Corporation—Abandonment Exemption—in Clearfield and Centre Counties, PA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, pursuant to 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by Consolidated Rail Corporation of: (1) The Snow Shoe Industrial Track between milepost 11.7± and milepost 22.5±, a distance of 10.8 miles; (2) the Phillipsburg Industrial Track between milepost 0.0± and milepost 4.5±, a distance of 4.5 miles; (3) the Winburne Industrial Track between milepost 0.0± and milepost 1.9±, a distance of 1.9 miles; and (4) the Ophir Industrial Track between milepost 0.0± and milepost 2.09±, a distance of 2.09 miles, a total distance of 19.29 miles in Centre and Clearfield Counties, PA, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file a financial assistance offer has been received, this exemption will be effective on October 8, 1995. Formal expressions of intent to file financial

assistance offers [1] under 49 CFR 1152.27(c)(2) must be filed by September 18, 1995. Petitions to stay must be filed by September 25, 1995. Requests for a public use condition must be filed by September 28, 1995. Petitions to reopen must be filed by October 3, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–167 (Sub-No. 1146X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Ave., N.W., Washington, DC 20423; and (2) Petitioner's representative: Robert S. Natalini, 2001 Market St.-16A, Philadelphia, PA 19101–1416.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Ave., NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: August 24, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–22310 Filed 9–7–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–290 (Sub-No. 173X)]

Norfolk Southern Railway Company—Abandonment Exemption—at Maryville, TN

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad at Maryville, Blount County, TN as follows: (1) between milepost 15.84–KA and milepost 16.05–KA, and (2) between milepost 0.09–KC and milepost 0.82–KC, a total distance of 0.94 miles.

NS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 8, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 [3] must be filed by September 18, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 28, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

NS has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 13, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 5, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–22465 Filed 9–7–95; 8:45 am]

BILLING CODE 7035–01–P

---

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis 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 on environmental concerns is encouraged to file its request as soon as possible in order to permit the 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 request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department

of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resouces Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Reinstatement, with Change, of a Previously Approved Collection for Which Approval has Expired

(1) Change of Address Form.

(2) Form: EOIR–33. Executive Office for Immigration Review, United States Department of Justice.

(3) Primary: Individuals or households. Other: None. This form is to be used by individuals in immigration proceedings to report their change of address to Immigration Judges or the Board of Immigration Appeals.

(4) 15,000 responses per year at .04 hours per response.

(5) 600 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: September 5, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22308 Filed 9–7–95; 8:45 am]

BILLING CODE 4410–01–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/ collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Existing Collection in Use Without an OMB Control Number

(1) Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge.

(2) Form: EOIR–26. Executive Office for Immigration Review, United States Department of Justice.

(3) Primary: Individuals or households. Other: Federal Government. This form will be used to consider appeals by the Immigration and Naturalization Service or an alien to the Board of Immigration Appeals from a decision of an Immigration Judge.

(4) 15,000 responses per year at .50 hours per response.

(5) 7,500 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: September 5, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22307 Filed 9–7–95; 8:45 am]

BILLING CODE 4410–01–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/ collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) Victims of Crime Act, Crime Victims Assistance Grant Program, Performance Report.

(2) Form: OJP Admin. Form 7330 (Rev. 4–92). Office for Victims of Crime, Office of Justice Programs, United States Department of Justice.

(3) Primary: State, Local, or Tribal Government. Other: None. The information requested is necessary to ensure compliance with statutory criteria which allow the Director of the Office for Victims of Crime to collect performance data from recipients of Victims of Crime Act victim assistance grant funds. The affected public includes up to 57 states and territories administering the crime victim

assistance provisions of the Victims of Crime Act of 1984.

(4) 57 responses per year at 21 hours per response.

(5) 1,197 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: September 5, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22306 Filed 9–7–95; 8:45 am]

BILLING CODE 4410–18–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington DC 20530.

New Collection

(1) Appeal Fee Waiver Request.

(2) Form: EOIR–26A. Executive Office of Immigration Review, United States Department of Justice.

(3) Primary: Individuals and households. Other: None. This form will be used by individuals to apply for a waiver of the fee required to properly file an appeal with the Board of Immigration Appeals.

(4) 450 responses per year at 1 hour per response.

(5) 450 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: September 5, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22305 Filed 9–7–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy and 28 C.F.R. 50.7, notice is hereby given that on August 25, 1995, a Consent Decree in *United States* v. *Arrow Concrete Company*, Civil Action No. 5:95CV122 was lodged with the United States District Court for the Northern District of West Virginia.

This Consent Decree settles claims brought pursuant to section 309(b) of the Clean Water Act (the ''Act''), 33 U.S.C. 1319(b), for civil penalties and injunctive relief for the discharge of pollutants in violation of section 301 of the Act, 33 U.S.C. § 1311. Under the terms of the Consent Decree, Arrow Concrete Company has agreed to pay a civil penalty of $140,000, comply with interim discharge limits protective of water quality, and promptly apply for, and comply with the requirements of, National Pollution Discharge Elimination System (''NPDES'') permits for its West Virginia facilities.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Arrow Concrete Company*, Civil Action No. 95CV122, Ref. No. 90–5–1–1–5066. The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of West Virginia, 1100 Main Street, Suite 200, Wheeling, West Virginia 26003. Copies of the Consent Decrees may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005 (202–624–0892) and the offices of the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. When requesting a copy by mail, please enclose a check in the amount of $6.25 (twenty-five cents per page reproduction costs) payable to the ''Consent Decree Library.''

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–22264 Filed 9–7–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 U.S.C. 50.7, and pursuant to 42 U.S.C. 7413(g), notice is hereby given that a proposed Consent Decree in *United States* v. *National Cooperative Refinery Association*, Civil Action No. *94–2015 GTV*, was lodged on August 22, 1995, with the United States District Court for the District of Kansas.

The Consent Decree settles an action brought under Section 113 of the Clean Air Act (''the Act''), 42 U.S.C. 7413, and the Standards of Performance for New Stationary Sources (''NSPS''), 40 CFR Part 60, Subpart Db. The Consent Decree provides for NCRA's payment of a civil penalty to the United States in the amount of $176,312.00, and requires NCRA's continued operation and maintenance of a Continuous Emissions Monitoring System (''CEMS'') installed on two steam boilers at its McPherson, Kansas refinery, in accordance with the requirements of the NSPS, 40 CFR Part 60, Subpart Db.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *National Cooperative Refinery Association*, DOJ Ref. #90–5–2–1–1835.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 500 State Avenue, suite

360, Kansas City, Kansas 66101; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $*2.75* (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–22265 Filed 9–7–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. Computer Associates International, Inc. and Legent Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in a civil antitrust case, *United States* v. *Computer Associates International, Inc. and Legent Corporation*, Civil No. 95 CV 1398.

On July 28, 1995, the United States filed a Complaint seeking to enjoin a transaction by which Computer Associates agreed to acquire Legent. Computer Associates is the world's largest independent vendor of computer software for mainframe computers and a leading producer of mainframe computer systems management software. Legent is CA's major competitor in the mainframe computer systems management software business. The Complaint alleged that the proposed acquisition would substantially lessen competition in the sale of VSE tape management software, VSE disk management software, VSE security software, VSE job scheduling software, VSE automated operations software, and cross-platform systems management software in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

With respect to the five VSE markets, the proposed Final Judgment requires Computer Associates to license Legent's VSE products to a person determined by the United States to have the capabilities and resources needed to use the licenses as a viable and effective competitor. If CA is unable to identify a viable licensee that is satisfactory to the Department of Justice, the Court may appoint a trustee to carry out the licensing. With respect to the cross-platform systems management software market, the proposed Final Judgment forbids CA for five years from taking any action to restrict any other person's access to Peer Logic's key cross-platform systems management technology, called ''PIPES.'' A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

The public is invited to comment to the Justice Department and to the Court. Comments should be addressed to John F. Greaney, Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Room 9901, Washington, DC 20001 (telephone: 202/307–6200). Comments must be received within sixty days.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 207 of the U.S. Department of Justice, Antitrust Division, 325 7th Street NW., Washington, DC 20530 (telephone: 202/514–2481), and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue NW., Washington, DC 20001. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

In the matter of: United States of America, Plaintiff, v. Computer Associates, International, Inc., and Legent Corporation, Defendants. Civil Action No. 1:95CV01398. Filed: July 28, 1995.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Columbia.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendants and by filing that notice with the Court.

3. The defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

4. In the vent plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: July 27, 1995.

For Plaintiff United States of America.

Joel I. Klein,

Acting Assistant Attorney General.

Lawrence R. Fullerton,

Acting Deputy Assistant Attorney General.

Charles Biggio,

Senior Counsel for Merger Enforcement.

Constance K. Robinson,

Director of Operations.

John F. Greaney,

Chief, Computers and Finance Section.

N. Scott Sacks,

Assistant Chief, Computers and Finance Section.

Kenneth W. Gaul, Weeun Wang, Gilad Y. Ohana, Steven R. Beck, Minaksi Bhatt,

Attorneys, U.S. Department of Justice.

For Defendant Computer Associates International, Inc.

Richard L. Rosen.

For Defendant Legent Corporation.

Randolph H. Elkins.

So Ordered.

United States District Judge

Disclosure Pursuant to Rule 108(k)

Pursuant to Rule 108(k) of the Local Rules of this Court, the following is a list of all individuals entitled to be notified of the entry of the foregoing Stipulation and of the entry of the proposed Final Judgment:

Richard L. Rosen, Esq., Arnold & Porter, 555 Twelfth St., N.W., Washington, D.C. 20004–1202

Counsel for Defendant Computer Associates International, Inc.

Michael H. Byowitz, Esq., Wachtell, Lipton, Rosen & Katz, 51 West 52nd St., New York, NY 10019–6150

Counsel for Defendant Legent Corporation

Kenneth W. Gaul, Esquire, Attorney, Computers & Finance Section, Antitrust Division, U.S. Department of Justice, 555 4th St., N.W., Washington, D.C. 20001
Counsel for Plaintiff the United States

Final Judgment

In the matter of: United States of America, Plaintiff, v. Computer Associates International, Inc., and Legent Corporation, Defendants. Civil Action No. 1:95CV01398. Filed: July 28, 1995.

Whereas, Plaintiff, United States of America, having filed its Complaint herein on July 28, 1995, and Plaintiff and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of fact or law;

And Whereas, Defendants having agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment being prompt and certain remedial action to ensure that, after the acquisition referred to herein, competition is not substantially lessened in certain product markets for enumerated types of mainframe systems management software;

And Whereas, Defendants having represented to Plaintiff that the licensing and customer election procedures required below can and will be accomplished and that Defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the licensing and customer election provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. Venue is proper in this Court. The Complaint states a claim upon which relief may be granted against the Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

A. ''Computer Associates'' means Defendant Computer Associates International, Inc., its successors and assigns, each subsidiary and division thereof, and each officer, director, employee, agent and other person acting for or on behalf of any of them.

B. ''Customer'' means a holder of any current license or maintenance agreement for any subject software product with defendants, regardless where the customer is located.

C. ''Customer Information'' means all information, files, and records maintained by Defendants concerning Customers, including (i) all customer call reports (or portions thereof covering the Subject Software Products); (ii) all pricing information; (iii) all support and maintenance logs; and (iv) all other information maintained by defendants about specific Customers as concerns the Subject Software Products.

D. ''Defendants'' means, collectively or individually as the context requires, Computer Associates and/or Legent.

E. ''Effective Date(s)'' means the later of (i) the date of entry by the Court of this Final Judgment; or (ii) the execution of definitive license agreement(s) as contemplated in Part IV, below.

F. ''Legent'' means Defendant Legent Corporation, its successors and assigns, each subsidiary and division thereof, and each officer, director, employee, agent and other person acting for or on behalf of any of them.

G. ''PIPES'' means the technology developed by Peer Logic, Inc. known as PIPES, PIPES Platform, PIPES Platform Software Developers Kit, and derivative works of any of these products, both in object code and source code forms.

H. ''Subject Software Product'' means each of the following computer programs presently sold by Legent: (i) EPIC/VSE (VSE tape management and disk management); (ii) FAQS/PCS (VSE automated job scheduling); (iii) Alert/VSE and Alert/CICS (VSE security); and (iv) FAQS/ASO for VSE (VSE automated operations). Each Subject Software Product shall include:

1. all source code and object code for the version or versions of the Subject Software Product currently being sold or distributed anywhere in the world, all existing source code and object code for all prior versions of the Subject Software Product previously sold or distributed anywhere in the world, and the most current iterations of source code and object code for all versions of the Subject Software Product under development or developed but not yet being sold or distributed, as of the date of the license(s) entered into pursuant to Part IV, below;

2. all optional modules, add-ons, enhancements and software customization sold or distributed to customers for use with the Subject Software Product;

3. all development tools, development environments, unique programming languages, software patches and other software or intellectual property that are or were used to develop, upgrade, and maintain that Subject Software Product that (i) defendants have the right to license, sub-license or assign, and (ii) that are not generally commercially available;

4. all existing documentation developed for use with any past, present or future version of the Subject Software Product, including all technical or development documentation, all user documentation, and all support documentation and support records, delivered to each licensee in an electronic form acceptable to that licensee.

III. Applicability

A. The provisions of this Final Judgment apply to the Defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, employees, attorneys and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. Defendants and each person bound by this Final Judgment shall cooperate in ensuring that the provisions of this Final Judgment are carried out.

B. Defendants shall require, as a condition of the licensing required herein, that the licensee(s) agree to be bound by the provisions of this Final Judgment that apply to such licensee(s).

IV. Licensing

A. Bidding Procedures

Defendants are hereby ordered and directed to grant a nonexclusive, worldwide, irrevocable license for each Subject Software Product, on the terms and in the manner hereinafter stated:

1. Defendants shall, within seven (7) days after execution of the stipulation in this action, retain an independent investment banker to identify and solicit bidders, and to evaluate bids, for each Subject Software Product. The identity of and terms of retention of said investment banker shall be subject to the approval of the Plaintiff, and said investment banker shall be charged with faithfully carrying out the terms of this Final Judgment. In the event that Plaintiff does not approve the investment banker proposed by Defendants, Defendants shall within three (3) days, submit to Plaintiff six (6) alternate investment bankers, with the terms of the proposed retention stated for each. Plaintiff shall have the right to

select from among these six (6) alternatives.

2. The investment banker shall serve at the cost and expense of Defendants, and shall receive compensation based on a fee arrangement providing an additional incentive based solely on the price and terms of the license and the speed with which it is accomplished.

3. The investment banker shall have discretion to solicit bids for license of the Subject Software Products and to otherwise make known, by usual and customary means, the availability for license of the Subject Software Products. Plaintiff and Defendants may provide names of prospective licensees to the investment banker for solicitation, but in no event shall the investment banker be limited to soliciting bids only from persons identified by Plaintiff or Defendants.

4. The investment banker shall provide any person making an inquiry regarding a possible bid for the Subject Software Products with a copy of this Final Judgment, and shall coordinate the furnishing to all bona fide prospective licensees the information and access specified in sub-section IV.A.5, below. The investment banker shall have discretion to establish such pre-bidding and bidding procedures, subject to the approval of Plaintiff, as are reasonably designed to elicit acceptable bids not later than twenty (20) days after the investment banker is retained. The investment banker shall file weekly reports with the parties setting forth the investment banker's efforts to accomplish licensing of the Subject Software Products as contemplated under this Final Judgment, including the name, address, and telephone number of each person who, during the preceding week, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the subject software products, and shall describe in detail each contact with any such person during that period.

5. Defendants shall promptly furnish to all bona fide prospective licensees, subject to customary confidentiality assurances, all information reasonably necessary for pre-bidding due diligence regarding the subject software products, except such information as may be subject to the attorney-client privilege or the attorney work product doctrine. Defendants shall provide such information to the Plaintiff at the same time that such information is made available to any other person. Defendants shall permit prospective licensees of each Subject Software Product to have reasonable access to personnel and to make such reasonable inspection of any Subject Software Product, together with such financial, operational, or other documents and information as may be relevant to the license required by this Final Judgment.

6. Within seven (7) days after the close of bidding, provided for in sub-section IV.A.3 above, the investment banker shall, in consultation with the parties, determine the successful bidder or bidders for each Subject Software Product. No bid may be accepted that contains any provision requiring or permitting continuing royalty payments to Defendants or the reporting to defendants of sales units or revenues of the Subject Software Product by the bidder. Preference may first be given to bids to license all subject software products, then to license multiple Subject Software Products, then to license an individual Subject Software Product.

7. Defendants shall make all reasonable efforts to enter into a definitive agreement for the licensing of each Subject Software Product to the successful bidder or bidders within fourteen (14) days after selection by the investment banker of the successful bidder or bidders. Plaintiff may, in its sole discretion, extend the time period for completion of a definitive licensing agreement for an additional period of time not to exceed thirty (30) days.

8. Unless Plaintiff otherwise consents, licensing of the Subject Software Products shall include such assets and be accomplished in such a way as to satisfy Plaintiff, in its sole discretion, that each Subject Software Product can and will be used by the licensee(s) as part of a viable, ongoing business involving the sale or license of the Subject Software Product to customers, including a demonstration to Plaintiff's satisfaction that (i) the license is for the purpose of competing effectively in the selling of the Subject Software Products to customers; (ii) the licensee has the managerial, operational, technical and financial capability to compete effectively in the selling of the Subject Software Products to customers; and (iii) none of the terms of the any agreement between the licensee and Defendants gives Defendants the ability artificially to raise the licensee's costs, impairs the licensee's ability to innovate the Subject Software Products, impairs the licensee's ability to support customers, or otherwise interferes with the ability of the licensee to compete effectively. Plaintiff may decline to approve a license of a Subject Software Product to any person currently selling any product in the same product market (as alleged in Plaintiff's Complaint).

9. Within one (1) business day following execution of a definitive agreement for the licensing of any or all of the Subject Software Products, Defendants or the trustee, whichever is then responsible for effectuating the license, shall notify Plaintiff of the proposed license. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in any Subject Software Product, together with full details of same. Plaintiff may, at its sole discretion, request additional information concerning the proposed license and the proposed licensee, which Defendants and the proposed licensee shall promptly provide. Plaintiff shall provide prompt written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed licensee. Upon written notice that the Plaintiff does not object to the proposed licensee, a license proposed under this Part IV may be consummated.

B. License Rights

Any license for one or more of the Subject Software Products shall, at minimum, convey the following:

1. the Subject Software Product, as defined herein;

2. the right of the licensee(s) to obtain comprehensive training for its developers and support personnel from Defendants, such that the licensee(s) will be able to maintain, develop and support the Subject Software Product in substantially the same manner as Defendants;

3. the right of the licensee(s) to assign or sub-license substantially all of its rights under the license(s) to another person, or to sub-license for the purpose of creating distributorships or agents of the licensee, *provided however*, that the license may, if Defendants and the licensee(s) so agree, preclude the sub-license of rights to any Subject Software Product on a non-exclusive basis for the purpose of creating additional independent, competing software vendors of a Subject Software Product;

4. for a period of 180 days after the Effective Date, the right of the licensee(s), without interference from Defendants, to solicit, bid for and hire any of Defendants' employees, agents or contractors whose job duties as of the date of the filing by the parties of this Final Judgment relate, in whole or in part, directly to the development of technical support of the subject software

products (hereinafter, the ''Subject Software Product Employees''). To effectuate this right, Defendants shall provide to the licensee(s): (i) the name, address, telephone number, job description, and current compensation of each Subject Software Product Employee; (ii) the right to contact and recruit any or all such persons regarding possible employment; (iii) releases by defendants from any non-compete covenants applicable to any Subject Software Product Employee; and (iv) releases by Defendants from any right under federal, state or other applicable law to claim misappropriation of intellectual property or trade secrets, insofar as such intellectual property or trade secrets relate to the development or support of the Subject Software Products;

5. the right of the licensee to obtain the employment files and records of the Subject Software Product Employees, pursuant to the following procedure: (i) All such employment files and records (or copies thereof), as well as the names, addresses, and telephone numbers of such persons, shall be provided by the Defendants to the investment banker, within five (5) days after the retention of the investment banker; (ii) the investment banker shall contact each Subject Software Product Employee and notify such person, in a form approved in advance by Plaintiff (a) of that person's right to authorize the investment banker or trustee to release that person's employment file or record to any licensee; (b) of the manner in which that person shall provide notice to the investment banker or trustee of its authorization (such as a telephone number that Employee should call); (c) that Defendants will not learn from the investment banker or trustee of the person's authorization to release his or her employment file or record to the licensee; and (d) of the time period in which the person must communicate his or her authorization to the investment banker or trustee; (iii) if a person chooses to authorize the release of his or her employment file or record, the investment banker or trustee shall promptly provide to the licensee(s) that person's employment file or record; and (iv) the investment banker or trustee shall not disclose to Defendants the identity of any person that has chosen to authorize the release of his or her employment file to a licensee(s);

6. for all Customers who elect to transfer their customer relationship for any Subject Software Product to the licensee pursuant to section V, blow: (a) full and complete assignment of all licenses and maintenance contracts for the Subject Software Products so transferred, and (b) full and complete transfer of all Customer Information covering the Subject Software Products so transferred, *provided however* that Defendants may retain Customer Information, but no Customer Information retained by Defendants shall be used for purposes of selling or marketing any Subject Software Product to any Customer who elects, pursuant to Part V herein, to transfer its business relationship to the licensee(s) for any Subject Software Product.

7. for a period of not less than one year after the Effective Date, full and prompt disclosure of all technical updates and problem resolution protocols for the Subject Software Products;

8. for a period of not less than one year after the Effective Date, reasonable (post-license) access during normal business hours to senior members of Defendants' development and support teams for the Subject Software Products to answer questions and provide problem resolution and advice relating to customer support;

9. for a period of not less than one year after the Effective Date, the right of the licensee to refer to the trademarks or trade names of the Subject Software Product for the purpose of representing to Customers and prospective customers that the Subject Software Product was developed by and licensed from Defendants. This subparagraph, however, shall not be construed to grant the licensee any right to market the Subject Software Product under the Defendants' trademarks or trade names.

C. Appointment of Trustee

1. If Defendants have not executed a definitive license or licenses to transfer all Subject Software Products as required by section IV.A, above, within the time specified therein (including any extension granted by Plaintiff pursuant to subsection IV.A.7, above), Defendants shall immediately notify Plaintiff of that fact in writing. Within five (5) calendar days of that date, Plaintiff shall provide Defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required licensing. Defendants shall notify Plaintiff within five (5) calendar days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to Defendants, Plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to Defendants, they shall furnish to Plaintiff, at the time of Defendant's notification to Plaintiff, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required license. If either or both of such nominees are acceptable to Plaintiff, Plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to Plaintiff, Plaintiff shall furnish the Court the names and qualifications of its and Defendants' proposed nominees. The Court may hear the parties as to the nominees' qualifications and shall appoint one of the nominees as the trustee.

2. After the trustee's appointment has become effective, only the trustee shall have the right to license the Subject Software Products. The purpose of the trust shall be to create a viable, ongoing business which can compete effectively in the selling of the Subject Software Products. The trustee shall have the power and authority to execute a license or licenses to a person(s) acceptable to Plaintiff at such price and on such terms as are then obtainable upon the best reasonable effort by the trustee, subject to the provisions of sections IV.A and IV.B of this Final Judgment, and shall have such other powers as this Court shall deem appropriate to perform those functions. Defendants shall not object to the licensing of the Subject Software Products by the trustee on any grounds other than the trustee's malfeasance. Any such objection by Defendants must be conveyed in writing to Plaintiff and the trustee within five (5) calendar days after the trustee has notified Defendants of the proposed licensing.

3. The trustee shall serve at the cost and expense of Defendants, shall receive compensation based on a fee arrangement providing an incentive based on the price and terms of the license(s) and the speed with which it is accomplished, and shall serve on such other terms and conditions as the court may prescribe; provided however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of its appointment. The trustee shall account for all monies derived. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to Defendants and the trust shall then be terminated.

4. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the licensing of the Subject Software Products and shall use their best efforts to assist the trustee in accomplishing the required license(s). The trustee shall have such full and

complete access to the personnel, books, records, and facilities of Defendants' overall businesses as is reasonably necessary to carry out its responsibilities, and Defendants shall develop such financial or other information the trustee deems reasonably necessary to the licensing of the Subject Software Products. The trustee shall have full and complete access to the books and records of the investment banker retained pursuant to Section IV.A, above, relating to the investment banker's (i) attempts to obtain licensing of the Subject Software Products; and (ii) collection of employee files and records and authorizations to release such files and records to licensee(s).

5. After its appointment becomes effective, the trustee shall file weekly reports with the parties and the Court setting forth the trustee's efforts to accomplish licensing of the Subject Software Products as contemplated under this Final Judgment; *provided however,* that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding week, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Subject Software Products, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to license the Subject Software Products.

6. Within ninety (90) days after its appointment has become effective, if the trustee has not accomplished the license(s) required to effectuate this Final Judgment, the trustee shall promptly file with the parties and the Court a report setting forth (i) the trustee's efforts to accomplish the required licensing, (ii) the reasons, in the trustee's judgment, why the required license(s) have not been accomplished, and (iii) the trustee's recommendations; *provided however,* that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The parties shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include disposing of any or all assets of the Subject Software Product businesses, including Customer contracts and/or software assets, to such buyers as the Court deems appropriate, or extending the trust and the term of the trustee's appointment.

V. Customer Election

Defendants are hereby ordered and directed to take all measures necessary to effectuate the orderly and fair election and, where applicable, orderly transfer of all customer relationships concerning each Subject Software Product to the licensee of such Subject Software Product in the manner hereinafter stated.

A. Immediately upon execution of a definitive agreement to license any Subject Software Product, all provisions of any customer license or maintenance contract concerning such Subject Software Product that directly or indirectly restrict the Customer's ability to transfer its license or maintenance agreements of any Subject Software Product to the licensee of such Subject Software Product shall be suspended until the completion of the election and transfer process.

B. Within one (1) business day after execution of a definitive agreement or agreements to license the Subject Software Product, Defendants shall provide the investment banker or, if applicable, the trustee, with a complete list of the names, addresses, telephone numbers, and primary contact person of each Customer of each Subject Software Product, together with all licenses or other contracts relating to the Subject Software Products.

C. Within five (5) calendar days after execution of a definitive agreement to license each Subject Software Product, the investment banker or, if applicable, the trustee, shall at Defendants' expense provide all customers with a notification of the right to elect whether to transfer their software license and maintenance contracts for the Subject Software Product to the licensee(s) of the Subject Software Product, such notification to be in a form approved by Plaintiff. Such notification shall include a copy of this Final Judgment, specify the identity of the licensee(s) of the Subject Software Products, specify the procedures to be followed in electing to transfer software licenses and maintenance contracts, and state an address of Plaintiff at which to direct questions or complaints about possible violations of the terms of this Final Judgment. Defendants and the licensee of the Subject Software Product shall have an equal right to enclose marketing or promotional materials with such notification, subject to Plaintiff's advance approval of such materials.

D. Except for the marketing or promotional materials included in the notification pursuant to the preceding subsection, Defendants and the licensee of the Subject Software Product shall not otherwise contact or communicate with any customer so notified regarding the Subject Software Products or the customer's election until after the conclusion of the election period and transfer of all customer relationships to the licensee of each Subject Software Product, except (i) insofar as the customer initiates such contacts; and (ii) as may be necessary for routine technical support. In the event a customer's license or maintenance agreement covering any Subject Software Product shall expire or otherwise be renewable during the election period, the terms of the previous license or contract shall be extended until the conclusion of the election period and transfer of the customer relationship, unless the customer affirmatively terminates the license or contract. Defendants shall not solicit or induce customers to terminate licensees or contracts for the purpose of negotiating successor contracts during the election period.

E. Each Customer shall be permitted thirty (30) days after notification in which to notify the investment banker, or, if applicable, the trustee, of its election as to whether Defendants or the licensee shall have the rights to their software licenses and maintenance contracts for the Subject Software Products. Each Customer shall be given instructions how to notify the investment banker or trustee of its election. At the close of the thirty (30) day period, each Customer that has not communicated its election to the investment banker or, if applicable, the trustee shall be notified by the investment banker or trustee that it has fifteen (15) additional days in which to make an election and that failure to elect within that period shall result in such Customer being allocated either to the Defendants or to the licensee(s). Customers failing to elect by the end of the fifteen (15) day period shall be randomly assigned to defendants or the licensee(s) of the Subject Software Products on a pro rata percentage equal to that of Customers who timely elected.

F. Promptly upon the close of the notification period or the Effective Date, whichever is later, the investment banker or trustee shall notify the parties and the licensee of the Subject Software product of the election of each Customer, whether the Customer affirmatively made an election or was

assigned at random, and provide the licensee with the information specified in subsection V.B, above, relating to each Customer that elected or was assigned to the licensee.

G. Within five (5) business days after receiving notification from the investment banker or trustee identified in the previous Section, Defendants shall transfer to the licensee of the subject software product all Customer Information for each Customer that (i) elected to transfer its license or maintenance agreement; or (ii) was allocated to the licensee(s) pursuant to Section V.E, above.

H. For each Customer that elects to transfer its license or maintenance agreement, or that is allocated to licensee(s) pursuant to Section V.E, above, Defendants shall pay to licensee a pro rata amount of all maintenance fees already paid by such Customer to Defendants to the extent such fees relate to service periods after the date of such assignment. If the maintenance fees were negotiated or calculated as part of a multi-product bundle or package, the payment to licensee(s) shall be calculated by apportioning the maintenance fees among the products subject to the bundle or package in a ratio derived from the prices of each product as stated in Defendants' standard price list or schedule as of the date upon which the maintenance agreement became effective.

I. Upon transfer of all Customer Information, the licensee of the Subject Software Product, or Defendants, as the case may be, shall be deemed to be in full privity of contract with the Customer, and any provisions of the license or maintenance agreements that were suspended pursuant to section V.A. above shall be reinstated for the full remaining term of the contract.

J. Defendants shall not solicit any Customer electing to transfer its customer relationship for any Subject Software Product to the licensee, or that is allocated to the licensee pursuant to section V.E. above, to breach, repudiate, or abrogate the transferred maintenance agreement during the full remaining term of such agreement.

K. In any case where a Customer elects to transfer its customer relationship to the licensee, or is allocated to the licensee pursuant to section V.E. above, for a Subject Software Product covered by a license or maintenance agreement that also covers other products, such election shall apply only in respect of the Subject Software Product, and the license or maintenance agreement shall otherwise remain fully in effect; *provided however* that any continuing license or maintenance obligation shall be reduced by an amount calculated by apportioning the licensing or maintenance fees in a ratio derived from the prices of each product as stated in Defendants' standard price list or schedule as of the ate upon which the license or maintenance agreement became effective.

VI. Preservation of Assets

Until the transfer of the Subject Software Products and customers relationships required by the Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with this Final Judgment and with the Stipulation previously executed by Defendants. Defendants shall take no action that would jeopardize the licensing of any Subject Software Product, shall continue to commit resources, development and support to each Subject Software Product at a level not materially less than that committed prior to the announcement of the subject acquisition, and shall not otherwise jeopardize the commercial viability of any Subject Software Product insofar as rights thereto may be transferable to a licensee of the Subject Software Product.

VII. Cross-Platform Technology

For five years following the entry by the Court of this Final Judgment, Defendants shall take no action, nor assert any right, to restrict Peer Logic, Inc. or any successor or assign of Peer Logic, Inc. from licensing PIPES to any other person, notwithstanding any provisions of any agreement between such defendant and Peer Logic, Inc. to the contrary.

VIII. Compliance Inspection

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege or doctrine, from time to time:

A. Duly authorized representatives of the Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants made to its principal office, shall be permitted:

1. Access during office hours of Defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of Defendants and without restraint or interference from them, to interview or depose officers, employees, and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to Defendants' principal office, Defendants shall submit such written reports, under oath if requested, with respect to the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the Untied States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to Plaintiff, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by Plaintiff to Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which a defendant is not a party.

IX. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

X. Termination

This Final Judgment will expire on the tenth anniversary of the date of its entry.

XI. Public Interest

Entry of this Final Judgment is in the public interest.

_____
United States District Judge

Dated: _____

In the matter of: United States of America, Plaintiff, v. Computer Associates International, Incorporated, and Legent Corporation, Defendants. Case No. 95 CV 1398 (TPJ). Filed: August 18, 1995. Received: August 18, 1995.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on July 28, 1995, alleging that the acquisition of Legent Corporation (''Legent'') by Computer Associates International, Inc. (''CA'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. CA and Legent are among the world's leading suppliers of systems management software for mainframe computers.

The Complaint alleges that the acquisition would eliminate significant competition between CA and Legent in five markets for systems management software used with mainframe computers that work with the VSE operating system: VSE tape management software; VSE disk management software; VSE security software; VSE job scheduling software; and VSE automated operations software. In addition, the Complaint alleges that the transaction would substantially lessen competition in the market for ''cross-platform'' systems management software, used in computer installations where a mainframe computer is linked together with other types of computer ''platforms'' (such as midrange computers or networks of workstations or personal computers). The Complaint seeks adjudication that CA's acquisition of Legent would violate Section 7 of the Clayton Act and preliminary and permanent injunctive relief.

At the same time as the filing of the Complaint, the United States filed a Stipulation and a proposed Final Judgment in settlement of the suit. With respect to each of the five markets for VSE systems management software products, the proposed Final Judgment requires CA to license Legent's products to a person who can and will use the license to compete effectively in the relevant markets. With respect to the market for cross-platform systems management software, the proposed Final Judgment prohibits CA from taking any action to restrict competitors' access to an important technology, called ''PIPES,'' that has been licensed to Legent by a third party, Peer Logic, Inc. (''Peer Logic'').

The United States, CA, and Legent have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed final judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

CA is a Delaware corporation with its principal place of business in Islandia, New York. In its fiscal year 1994, CA reported revenues in excess of $2.1 billion. CA produces and markets software for a variety of computers and operating systems, including systems management software for mainframe computers running IBM's VSE operating system. Aside from IBM, which writes the operating system software that run almost all mainframe computers, CA is the largest vendor of the software for IBM and IBM-compatible mainframe computers.

Legent is a Delaware corporation with its principal place of business in Herndon, Virginia, and sells several different types of computer software and related services. In its fiscal year 1994, Legent's total revenues were over $500 million. Like CA, Legent is a leading vendor of systems management software products for mainframe computers.

On May 25, 1995, CA announced that it had entered into a definitive agreement with Legent to purchase all issued and outstanding shares of Legent's common stock through a cash tender offer. This $1.75 billion transaction forms the basis of the government's suit.

B. VSE Systems Management Software

Mainframe computers are the large and powerful computers used by industrial, commercial, educational, and governmental enterprises for large scale data processing applications. Mainframe computers provide unique storage, throughput, and security features and functions that make them superior data processing devices for large corporate and institutional computer users throughout the world.

An operating system is software that controls the operational resources of the computer (including the central processor unit, memory, data storage devices, and other hardware components) and allows ''applications'' software (programs that perform user-directed tasks requested of the computer, such as programs that maintain payroll, inventory, sales, and other business accounts of a company) to run on the computer. The vast majority of the world's mainframe computers run with operating systems developed by IBM, of which one of the most widely used is the VSE operating system.

System management software is used to help manage, control, or enhance the performance of mainframe computers. Some systems management functionality may be incorporated in an operating system. Separate systems management software programs such as the products offered by CA and Legent, however, provide additional functionality that is demanded by mainframe users. These separate systems management programs work in conjunction and generally must be compatible with the computer's operating system.

CA and Legent both produce a wide range of mainframe computer systems management software products for the VSE operating system. They are direct competitors of each other with respect to the following VSE systems management software products: (1) Tape management software, which controls the computer's cataloguing, loading, formatting, and reading of the magnetic tapes used for data storage; (2) disk management software, which performs functions similar to that of tape management with respect to data storage in hard disk drive installations; (3) security management software, used to prevent unauthorized access to computer applications and data; (4) job scheduling software, used to direct the computer to run particular processing operations (called ''jobs'') at particular times or sequences; and (5) automated operations software, used to automate message and error handling and other operations at the computer system console.

Each of the above described VSE systems management software products perform distinct functions for which no reasonable substitute products exist. As to each of the VSE products, even a substantial price increase would not cause their purchasers to begin substituting any other products. Each of the VSE products, therefore, constitutes

a relevant product market in which to assess the competitive effects of CA's acquisition of Legent.

C. Cross-Platform Systems Management Software

''Cross-platform'' refers to different types of computer processor designs or architectures. In addition to mainframe computers, other ''platforms'' are midrange computers, workstations, and PCs, all of which can, in varying degrees, be linked together into integrated multi-platform networks. These networks are also referred to as ''distributed'' computer systems. The integration of mainframe computers into distributed multi-platform systems is a relatively recent development, but is of increasing importance to modern computer installations.

CA and Legent have developed cross-platform systems management software products that allow different platforms that make up a multi-platform network of computers to be efficiently managed from a single point in the network. Customers that require cross-platform systems management products would not turn to other means of systems management in response to a significant increase in prices of such cross-platform systems management software. Cross-platform systems management software therefore constitutes a relevant product market in which to assess the competitive effects of CA's acquisition of Legent.

D. Competition Between CA and Legent

CA and Legent compete against each other for sales of VSE and cross-platform systems management software throughout the United States. They compete with respect to both license royalties they charge users of systems management products, and the flexibility of the license terms they offer. Both firms market their products under licenses that require royalty payments for the right to use the product and payments for maintenance of and upgrades to the products.

Moreover, CA and Legent compete in providing product support and service to their customers. Due to the ''mission critical'' nature of the work done with mainframe computers, users highly value the speed and effectiveness of a vendor's installation, maintenance, and technical support of systems management products. CA and Legent also compete to improve, upgrade, and enhance their systems management products, both in terms of developing products of greater performance or functionality and in terms of products that are easier to install, use, and maintain.

E. Anticompetitive Consequences of the Acquisition

The Complaint alleges that CA's acquisition of Legent would substantially lessen competition and create (or facilitate CA's exercise of) market power in each of the relevant systems management software markets. Each of the relevant markets already is highly concentrated, and the acquisition would substantially increase concentration. In the VSE tape management, VSE disk management, and VSE security markets, CA's acquisition of Legent would make CA the sole supplier. In the VSE job scheduling and VSE automated operations markets, the acquisition would allow CA dominate with post-acquisition market shares of 71 percent and 88 percent respectively. In the cross-platform systems management market, the acquisition would eliminate substantial competition because CA and Legent currently are two of only a few competitors that have to date developed and commercialized the technology necessary to integrate mainframe computers into distributed computing systems.

The Complaint alleges that in each of the relevant markets, the reduction or elimination of competition from CA's acquisition would likely lead to higher prices and lower levels of product quality, service and support, and product innovations and development. The Complaint further alleges that the competitive harm resulting from the proposed acquisition is not likely to be mitigated by possibilities of new entry. For any of the relevant markets, entry would entail expenditures of substantial costs and time for the development of a competitive product that would be acceptable to mainframe customers. Such entry would not be timely, likely, or sufficient in scale to counteract or deter a price increase or a reduction in service or product quality in any of the relevant markets.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in each of the relevant systems management software markets in which CA's acquisition of Legent would be anticompetitive. As to each of the five VSE markets, the proposed Final Judgment requires CA to license Legent's products to a person determined by the United States to have the capabilities and resources needed to use the licenses as a viable and effective competitor.

Under the proposed Final Judgment, each of the VSE product licenses will be worldwide and perpetual in scope, granting the licensee full rights and capabilities to produce, market, and support the products, as well as to develop and market new product versions. The proposed Final Judgment provides that licensee with product development and support assistance and expertise—including the right to recruit Legent development and support personnel—that may be needed to compete effectively.

The proposed Final Judgment establishes procedures enabling current Legent customers to choose whether to purchase future support, maintenance and upgrades of the relevant systems management software products from CA or the licensee, without regard to the customers' current contracts with Legent. Five days after a license is finalized, Legent customers will be notified and given up to 45 days to elect to be supplied by CA or by the licensee. Customers who do not make an election will be assigned to CA or to the licensee on a pro rata basis in the same proportion as the customers who did make elections. The proposed Final Judgment provides that the new supplier will have all customer files, service and support records, and other documentation necessary for the new supplier to effectively serve the needs of the customers who elect to be supplied by the licensee.

If CA, with the assistance of an investment banker, is unable to identify a viable licensee that is satisfactory to the Department of Justice, the Court may appoint a trustee to attempt to carry out the licensing. In the event that the licensing provisions of the proposed Final Judgment do not result in the selection and establishment of a viable and effective competitor in a relevant VSE market, the Judgment requires CA to dispose of additional assets, including the complete divestiture of the products and transfer of Legent customer contracts, to accomplish the goal of establishing a viable and effective competitor.

With respect to the cross-platform systems management software market, the proposed Final Judgment forbids CA for five years from taking any action to restrict any other person's access to a key cross-platform systems management technology. This technology, called ''PIPES'' and developed by Peer Logic, consists of communication software technology that, among other things, allows the different operating systems in a cross-platform environment to interact with each other.

Peer Logic has licensed PIPES to Legent, for use with or incorporation into Legent Products. With its

acquisition of Legent, and depending on the interpretation of contractual relationships between Legent and Peer Logic, CA may succeed to Legent's rights to use PIPES. By prohibiting CA from potentially interfering with Peer Logic's licensing of PIPES to others, the proposed Final Judgment makes PIPES available to others who would use the technology in competing in the market for cross-platform systems management software.

The relief sought in the markets of concern in the Complaint has been tailored to maintain the level of competition that existed in those markets prior to the acquisition. With respect to the VSE systems management products, the proposed Final Judgment will establish a firm or firms that will offer consumers proven products and competent support. With respect to cross-platform systems management products, the proposed Final Judgment maintains the availability to third parties of technology that is useful in the development of cross-platform systems management solutions, thereby facilitating the more rapid development of competing products by other firms.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: John F. Greaney, Chief, Computers & Finance Section, Antitrust Division, United States Department of Justice, Suite 9901, 555 4th Street NW., Washington, DC 20001.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against defendants CA and Legent. The United States is satisfied, however, that the licensing and other relief contained in the Final Judgment should maintain viable and effective competition in the relevant VSE and cross-platform systems management software markets that would otherwise be substantially affected by the acquisition. Moreover, in the event that Legent's five VSE products cannot be promptly licensed to a viable competitor, the Court may order complete divestiture of the products. Thus, the Final Judgment will achieve the same benefit to competition that the government could have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the government's Complaint.

VII. Determinative Documents

One determinative document within the meaning of the APPA—a July 26, 1995 letter from Sanjay Kumar, CA's President and Chief Operating Officer—was considered by the United States in deciding to consent to the proposed Final Judgment. Mr. Kumar's letter clearly acknowledges that section IV.C.6 of the proposed Final Judgment empowers the Court to order full divestiture of Legent's five VSE products if viable licensee(s) cannot be found. A copy of this document is attached hereto, and will be available for public inspection.

Dated: August 18, 1995.

Respectfully submitted,

Kenneth W. Gaul,

Attorney, Antitrust Division, U.S. Department of Justice.

July 26, 1995.

By Facsimile

Honorable Anne K. Bingaman,
Assistant Attorney General, Antitrust Division, United States Department of Justice, 10th Street & Pennsylvania Avenue NW., Washington, DC 20530

RE: Computer Associates International, Inc./ Legent Corporation

Dear Anne: Pursuant to our conversation of this afternoon, this letter will act as confirmation of Computer Associates' understanding regarding the proposed Consent Decree. We hereby acknowledge that the Decree permits the Court sufficient discretion, if the Court so desires, to dispose of the five VSE software products in question in the event that a suitable licensee or licensees are not found. We understand that such disposition ordered by the Court could include the divestiture of one or more of these five VSE software products.

We remain confident that, with the Department's cooperation, the license mechanism proposed in the Decree will work and satisfy all of your requirements.

Sincerely,

Sanjay Kumar,

President and Chief Operating Officer, Computer Associates International, Inc.

Certificate of Service

The undersigned certifies that he is a paralegal employed by the Antitrust Division of the United States Department of Justice, and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that on August 13, 1995, he caused true copies of the Competitive Impact Statement of plaintiff, United States, and this Certificate of Service, to be served upon the persons at the place and addresses stated below:

Counsel for Computer Associates

Richard L. Rosen, Esq., Arnold & Porter, 555 12th Street NW., Washington, DC 20004 (by facsimile and by hand delivery)

Counsel for Legent

Michael H. Byowitz, Esq., Wachtell, Lipton, Rosen & Katz, 51 W. 52nd Street, New York, NY 10019 (by facsimile and by overnight courier)

Dated: August 18, 1995.

Joshua Holian,

Paralegal, U.S. Department of Justice, Antitrust Division, Computers & Finance Section.

[FR Doc. 95–22266 Filed 9–7–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction, General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis–Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA950001 (Feb. 10,1995)
MA950002 (Feb. 10,1995)
MA950003 (Feb. 10,1995)
MA950007 (Feb. 10,1995)
MA950009 (Feb. 10,1995)
MA950010 (Feb. 10,1995)
Maine
ME950013 (Feb. 10,1995)
New Hampshire
NJ950007 (Feb. 10,1995)
New Jersey
NJ950002 (Feb. 10,1995)
NJ950003 (Feb. 10,1995)
New York
NY950008 (Feb. 10,1995)
NY950010 (Feb. 10,1995)
NY950016 (Feb. 10,1995)
NY950017 (Feb. 10,1995)
NY950033 (Feb. 10,1995)
NY950039 (Feb. 10,1995)
NY950041 (Feb. 10,1995)
NY950045 (Feb. 10,1995)
NY950072 (Feb. 10,1995)
Rhode Island
RI950001 (Feb. 10,1995)

Volume II

Pennsylvania
PA950006 (Feb. 10,1995)
PA950007 (Feb. 10,1995)
PA950009 (Feb. 10,1995)
PA950026 (Feb. 10,1995)
PA950030 (Feb. 10,1995)
PA950031 (Feb. 10,1995)
PA950040 (Feb. 10,1995)
PA950042 (Feb. 10,1995)

Volume III

None

Volume IV

Illinois
IL950001 (Feb. 10,1995)
IL950002 (Feb. 10,1995)
IL950004 (Feb. 10,1995)
IL950005 (Feb. 10,1995)
IL950006 (Feb. 10,1995)
IL950008 (Feb. 10,1995)
IL950011 (Feb. 10,1995)
IL950012 (Feb. 10,1995)
IL950013 (Feb. 10,1995)
IL950014 (Feb. 10,1995)
IL950015 (Feb. 10,1995)
IL950016 (Feb. 10,1995)
IL950017 (Feb. 10,1995)
IL950021 (Feb. 10,1995)
IL950022 (Feb. 10,1995)
IL950023 (Feb. 10,1995)
IL950025 (Feb. 10,1995)
IL950026 (Feb. 10,1995)
IL950027 (Feb. 10,1995)
IL950028 (Feb. 10,1995)
IL950029 (Feb. 10,1995)
IL950030 (Feb. 10,1995)
IL950032 (Feb. 10,1995)
IL950034 (Feb. 10,1995)
IL950041 (Feb. 10,1995)
IL950042 (Feb. 10,1995)
IL950043 (Feb. 10,1995)
IL950046 (Feb. 10,1995)
IL950047 (Feb. 10,1995)
IL950048 (Feb. 10,1995)
IL950051 (Feb. 10,1995)
IL950052 (Feb. 10,1995)
IL950053 (Feb. 10,1995)
IL950058 (Feb. 10,1995)
IL950059 (Feb. 10,1995)
IL950060 (Feb. 10,1995)
IL950061 (Feb. 10,1995)
IL950062 (Feb. 10,1995)
IL950063 (Feb. 10,1995)
IL950064 (Feb. 10,1995)
IL950067 (Feb. 10,1995)
IL950068 (Feb. 10,1995)
IL950069 (Feb. 10,1995)
IL950071 (Feb. 10,1995)
IL950073 (Feb. 10,1995)
IL950075 (Feb. 10,1995)
IL950077 (Feb. 10,1995)

IL950079 (Feb. 10,1995)
IL950082 (Feb. 10,1995)
IL950084 (Feb. 10,1995)
IL950087 (Feb. 10,1995)
IL950090 (Feb. 10,1995)
IL950092 (Feb. 10,1995)
IL950094 (Feb. 10,1995)
IL950095 (Feb. 10,1995)
IL950096 (Feb. 10,1995)
IL950098 (Feb. 10,1995)

Volume V

Iowa
IA950005 (Feb. 10,1995)
Louisiana
LA950001 (Feb. 10,1995)
LA950004 (Feb. 10,1995)
LA950005 (Feb. 10,1995)

Volume VI

California
CA950004 (Feb. 10,1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 1st day of September 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–22253 Filed 9–7–95; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. E & E Fuels

[Docket No. M–95–110–C]

E & E Fuels, P.O. Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.340 to its Orchard Slope (I.D. No. 36–08346) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive during idle periods when all miners are out of the mine and to have intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Solar Sources Underground L.L.C.

[Docket No. M–95–111–C]

Solar Sources Underground L.L.C., P.O. Box 325, Monroe City, Indiana 47557 has filed a petition to modify the application of 30 CFR 75.1700 to its Monroe City Mine (I.D. No. 12–02103) located in Knox County, Indiana. The petitioner proposes to plug and mine through oil and gas wells. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Peabody Coal Company

[Docket No. M–95–112–C]

Peabody Coal Company, 1951 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42420–1990 has filed a petition to modify the application of 30 CFR 75.342(a)(2) to its Camp No. 11 Mine (I.D. No. 15–08357) located in Union County, Kentucky. The petitioner proposes to have alternative locations for two additional methane monitors in the longwall face area of the longwall shearing machine instead of using a single methane monitor. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Continuous Mining, Inc.

[Docket No. M–95–113–C]

Continuous Mining, Inc., P.O. Box 239, Edgarton, West Virginia 25672 has filed a petition to modify the application of 30 CFR 75.1710 to its Mine No. 1 (I.D. No. 46–07891) located in Mingo County, West Virginia. The petitioner operates its bridge haulage equipment manufactured for use in extremely low-seam mines and built without operator compartments or canopies. The petitioner proposes to operate this haulage equipment without canopies due to the frequent tearing out of roof bolts when tramming through dips and crests of hills in the coal seam being mined. The petitioner states that the use of canopies would expose the equipment operator to greater hazards than those incurred by operating without operator compartments and canopies.

5. Mystic Energy, Inc.

[Docket No. M–95–114–C]

Mystic Energy, Inc., 130 George Street, Suite J, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.364(b)(1) to its B. L. Mining No. 3 Mine (I.D. No. 46–07139) located in Boone County, West Virginia. Due to deteriorating roof conditions in the intake air course, the area cannot be traveled safely. The petitioner proposes to examine approximately 3,000 feet of the intake air course in the No. 4 Entry by checking the inby and outby ends of the affected area and to monitor for methane and the quantity and quality of air. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Consolidation Coal Company

[Docket No. M–95–115–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(1) to its Shoemaker Mine (I.D. No. 46–01436) located in Marshall County, West Virginia. Due to deteriorating roof and rib conditions in the intake airway from the Seabright Shaft to the No. 8 Seal in 4 North, the area cannot be traveled safely. The petitioner proposes to establish check points J and K to monitor the affected area and to have a certified person examine the area for methane and the quantity of air at both check points on a weekly basis; and to have the certified person initial and record the date, time, and results of the weekly examinations in a book kept on the surface and made available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at

least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 10, 1995. Copies of these petitions are available for inspection at that address.

Dated: August 29, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 95–22263 Filed 9–7–95; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: September 29, 1995, 8:00 a.m.–5:00 p.m.

Place: Room 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Ritchie Coryell, Program Director, SBIR Office, (703) 306–1390.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22348 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 94–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: September 28, 1995, 8:00 a.m.–5:00 p.m.

Place: Room 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Charles Hauer, Program Director, SBIR Office, (703) 306–1390 or Ed Bryan, Program Director, BES, (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22353 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: September 28, 29, 1995, 8:00 a.m.–5:00 p.m.

Place: Room 970, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Darryl Gorman, SBIR Office, (703) 306–1390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22340 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194) will be holding panel meetings for the purpose of reviewing proposals submitted to the Phase I Small Innovation Research Program in the area of Next Generation Vehicles.

In order to review the large volume of proposals, panel meetings will be held on September 26, 27, 1995, in rooms 310, and 365, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA from 8:00 to 5:00 each day.

Contact Person: Ritchie Coreyll, SBIR Office, (703) 306–1390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Reasn for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22347 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special

Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194) will be holding panel meetings for the purpose of reviewing proposals submitted to the Phase I Small Business Innovation Research Program in the area of Chemical and Thermal Systems.

In order to review the large volume of proposals, panel meetings will be held on September 25, 26, 27, 1995, in rooms 310, 320 and 530.

All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA from 8:00 to 5:00 each day.

Contact Person: Charles Hauer, SBIR Office, (703) 306–1390, or Robert Wellek, and Farley Fisher, Program Directors, CTS, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22346 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194) will be holding panel meetings for the purpose of reviewing proposals submitted to the Phase I Small Business Innovation Research Program in the areas of Atmospheric Sciences and Computer and Information Science and Engineering.

In order to review the large volume of proposals, panel meetings will be held on September 28, 1995, in rooms 310, 340, 360, and 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 and NCAR, Boulder, CO.

All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA from 8:00 to 5:00 each day.

Contact Person: Anthony Centodocati, SBIR Office, (703) 306–1390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

FR Doc. 95–22345 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194) will be holding panel meetings for the purpose of reviewing proposals submitted to the Phase I Small Business Innovation Research Program in the are of Chemical and Thermal Systems.

In order to review the large volume of proposals, panel meetings will be held on September 28, 1995, in room 565, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA from 8:00 to 5:00.

Contact Person: Charles Hauer, SBIR Office, (703) 306–1390, or Farley Fisher, Program Director, CTS, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22344 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: September 28, 1995, 8 a.m.–5 p.m.

Place: Room 1020, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Pat Johnson, SBIR Office, (703) 306–1390 or Dr. Rolf Sinclair, Program Director, MPS/PHY, (703) 306–1809.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22342 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194) will be holding panel meetings for the purpose of reviewing proposals submitted to the Phase I Small Business Innovation Research Program in the areas of Polar Science, Next Generation Vehicles, and Bioengineering and Environmental Systems (Materials).

In order to review the large volume of proposals, panel meetings will be held on September 29, 1995, in rooms 375, 530, 565, and 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. All meetings will be closed to the public and will be held at the

National Science Foundation, 4201 Wilson Blvd., Arlington, VA. from 8:00 to 5:00.

Contact Person: Charles Hauer, Anthony Centodocati, and Ritchie Coryell, SBIR Office, (703) 306–1390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22341 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundations announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: September 26, 1995, 8:00 a.m.–5:00 p.m.

Place: Room 565, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Charles Hauer, Program Director, SBIR Office, (703) 306–1390 or Edward Bryan, Program Director, BES, (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22351 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: September 26, 1995, 8:00 a.m.–5:00 p.m.

Place: Room 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Tony Centodocati, Program Director, SBIR Office, (703) 306–1390 or Joan Mitchell, Program Director, GEO, (703) 306–1580.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22350 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194

Date and Time: September 27, 1995, 8:00 a.m.–5:00 p.m.

Place: Room 565, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Charles Hauer, Program Detector, SBIR Office, (703) 306–1390 or Ed Bryan, Program Director, BES, (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22349 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Industrial Innovation Interface; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Small Business Industrial Innovation (SBIR) (#61).

Date and Time: September 28, 1995, 1:00–5:00 p.m., September 29, 1995, 8:30 a.m.–12 noon.

Place: Room 590, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Cheryl Albus, SBIR Program Coordinator, (703) 306–1390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning research programs pertaining to the small business community.

Agenda

September 28, 1995

1:00 p.m. to 1:30 p.m.—Welcome and introductions.
1:30 p.m. to 3:30 p.m.—Review and discussion of programs.
3:30 p.m. to 5:00 p.m.—Report from Committee of Visitors.

September 29, 1995

8:30 a.m. to 10:30 a.m.—Discussion of program issues.
10:30 a.m. to 12:00 noon—Preparation of Committee report.
12:00 noon—Adjourn.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22343 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR)

Dates and Times: September 28, 1995, 8:30 am–5:00 pm Room 730; September 29, 1995, 8:30 am–5:00 pm Room 1060.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meetings: Closed.

Contact Person: Dr. Lorretta J. Inglehart, Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 306–1817.

Purpose of Meetings: To provide advice and recommendations concerning support for the Synchrotron Radiation Center, University of Wisconsin proposal.

Agenda: Evaluation of proposal.

Reason for Closing: The proposal being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552 b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

FR Doc. 95–22352 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

PECO Energy Company; Notice of Issuance of Amendment to Facility Operating Licenses

[Docket Nos. 50–277 and 50–278]

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 210 and 214 to Facility Operating Licenses Nos. DPR–44 and DPR–56 issued to PECO Energy Company (the licensee), which revised the Technical Specifications (TS) for operation of the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania. The amendment is effective as of the date of issuance and shall be implemented within 150 days from the date of issuance.

The amendments replace the current TS and associated Bases with a set of TS based on NUREG–1433, ''Standard Technical Specifications, General Electric Plants, BWR/4,'' dated September 1992.

The application for the amendment dated September 29, 1994, as supplemented by letters dated March 3, March 30, May 4 (two letters), May 8, May 9, May 16, May 24, May 25, May 26, June 7, July 7, July 13, July 21 and August 4, (two letters), August 11, and August 28, 1995, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on May 19, 1995 (60 FR 26905). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (60 FR 42190).

For further details with respect to the action see (1) the application for amendment dated September 29, 1994, as supplemented by letters dated March 3, March 30, May 4 (two letters), May 8, May 9, May 16, May 24, May 25, May 26, June 7, July 7, July 13, July 21, August 4, (two letters), August 11 and August 28 1995, (2) Amendment Nos. 210 and 214 to Licenses Nos. DPR–44 and DPR–56, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania.

Dated at Rockville, Maryland, this 30th day of August 1995.

For the Nuclear Regulatory Commission.

Joseph W. Shea,

Project Manager Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–22309 Filed 9–7–95; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: OCRWM Program Update, Waste Isolation Strategy, ESF Construction & Science Update, NAS ''Release Standards,'' Total System Performance Assessment

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board will hold its fall meeting on October 17–18, 1995, in Arlington, Virginia. (Please note: In the event of a general government shutdown, the Board will decide on October 10, 1995, whether or not to cancel the meeting. Please call (703) 235–4473 on October 10 for the announcement.) The meeting will be held at the Arlington Renaissance Hotel, 950 N. Stafford Street, Arlington, Virginia 22203; (Tel) 703–528–6000; (Fax) 703–528–4386. The meeting is open to the public and will begin at 8:30 a.m. both days. Presentations during the meeting will focus on strategic concerns and performance assessment.

Strategic concerns in the high-level nuclear waste program will be covered the first day of the meeting. The Department of Energy (DOE) has been asked to provide updates on the Office of Civilian Radioactive Waste Management (OCRWM) program, the developing waste isolation strategy, and construction progress and initial science results in the exploratory studies facility. Congressional staff members will be invited to provide their views on pending legislation that may affect the nuclear waste program. The Board also will hear about the National Academy of Sciences report on release standards for Yucca Mountain and the DOE's reaction to the report. The Electric Power Research Institute will provide an analysis of different proposed standards. At the end of the day, there will be a round-table discussion of strategic developments and concerns.

Performance assessment will be covered on the second day of the meeting, including a detailed look at the OCRWM's Total System Performance Assessment 1995 for the Yucca Mountain site. Additional presentations and a round-table discussion on making the best use of performance assessment will conclude the day's activities.

Time will be set aside on the agenda for public comment and questions. To ensure that everyone wishing to speak is provided time to do so, the Board encourages those who have comments to sign the Public Comment Register, which will be located at the sign-in

table. Those registering are advised that, depending on the number of people wishing to speak, a speaking time limit may have to be set on the length of individual remarks. However, written comments of any length may be submitted for the record.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's spent nuclear fuel and defense high-level waste. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Transcripts of the meeting will be available on computer disk or on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning December 15, 1995. For further information, contact Frank Randall, External Affairs, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (Tel) 703–235–4473; (Fax) 703–235–4495.

Dated: September 1, 1995.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 95–22298 Filed 9–7–95; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program Medically Underserved Areas for 1996

AGENCY: Office of Personnel Management.

ACTION: Notice of Medically Underserved Areas for 1996.

SUMMARY: The Office of Personnel Management has completed its annual determination of the States that qualify as Medically Underserved Areas under the Federal Employees Health Benefits (FEHB) Program for calendar year 1996. This determination is necessary to comply with a provision of FEHB law that mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Accordingly, for calendar year 1996, OPM has determined that the following States are Medically Underserved Areas under the FEHB program: Alabama, Arkansas, Idaho, Louisiana, Mississippi, New Mexico, North Dakota, South Carolina, South Dakota, West Virginia, and Wyoming. Arkansas and Idaho are new for 1996; Georgia has been removed from the list.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, 202–606–0004.

SUPPLEMENTARY INFORMATION: FEHB law [5 U.S.C. 8902(m)(2)] mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Such States are designated as Medically Underserved Areas for purposes of the FEHB Program, and the law requires payment to all qualified providers in these States.

FEHB regulations (5 CFR 890.701) require OPM to make an annual determination of the States that qualify as Medically Underserved Areas for the next calendar year by comparing the latest Department of Health and Human Services State-by-State population counts on primary medical care manpower shortage areas with U.S. Census figures on State resident population.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 95–22315 Filed 9–7–95; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36175; File No. SR–Amex–95–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing and Trading of Options on the Amex HMO Index

August 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed with the Commission Amendment No. 1 on August 24, 1995.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list for trading options on the Amex HMO Index (''HMO Index'' or ''Index''). In addition, the Amex proposes to amend Rule 901C, Commentary .01 to reflect that 90% of the Index's numerical index value will be accounted for by stocks that meet the current criteria and guidelines set forth in Rule 915. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (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 purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style[4] stock index options on the HMO Index, an industry-specific index created by the Exchange.

Index Design

The HMO Index[5] consists of ten highly capitalized health care maintenance organization stocks and American Depository Receipts (''ADRs'') traded on the Amex, the New York Stock Exchange (''NYSE''), or through the National Association of Securities Dealers Automated Quotations system

[3] In Amendment No. 1, the Amex proposes to amend Amex Rule 904C to provide that position and exercise limits for options on the HMO Index shall be 5,500 contracts of the put class and the call class on the same side of the market. *See* Letter from Claire McGrath, Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission, dated August 24, 1995.

[4] European-style options can only be exercised during a specified period before the options expire.

[5] The HMO Index is a new stock index established in 1995 by the Amex based on health maintenance organization stocks (or ADRs thereon).

and are reported national market system securities (''NASDAQ/NMS'').[6] The components comprising the Index ranged in capitalization from $6.9 billion to $1.4 billion as of July 25, 1995. The total capitalization as of that date was $28 billion; the mean capitalization was $2.8 billion; and the median capitalization was $1.9 billion. The largest component accounted for 24.70% of the total weight of the Index, and the five largest components accounted for 72.56% of the total weight of the Index. On that same date, the smallest component accounted for 5.02% of the total weight of the Index.

Index Calculation

The Index will be calculated by Amex or its designee on a real-time basis using last-sale prices and will be disseminated every 15 seconds by the Amex to vendors over the Consolidated Tape Association's Network B. If a component share is not currently being traded on its primary market, the most recent price at which the share traded on such market will be used in the Index calculation.

The Index is calculated on ''capitalization-weighted'' basis, using the U.S. primary market prices for component securities, and current shares outstanding. For ADRs, the ADR price and total worldwide shares outstanding on an ADR-equivalent basis will be used. The value of the Index equals the current market value (based on U.S. primary market prices) of each of the Components in the Index divided by the current Index divisor. The Index divisor was initially calculated to yield a bench-mark value of 200.00 at the close of trading on May 31, 1995.

Maintenance

The Index will be maintained by Amex, and pursuant to Exchange Rule 901C(b) may at any time or from time to time substitute stocks, or adjust the number of stocks included in the Index, based on changing conditions in the HMO Industry. In the event the Exchange determines to change the number of Index component stocks to less than nine or greater than thirteen, the Exchange will submit a rule filing pursuant to Section 19(b) of the Act.

Additionally, the Exchange will ensure that at least 90% of the stocks in the Index, by weight, individually satisfy the Exchange's listing and maintenance criteria applicable to listing standardized options thereon. Currently, the Exchange represents that all of the Index's components are options eligible[7] and the subject of standardized options trading.

Expiration and Settlement

HMO Index options will have European-style exercise and will be A.M.-settled index options. Standard option trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply. The proposed options on the HMO Index will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

The Index value for purposes of settling a specific HMO Index option will be calculated based upon the primary exchange regular way opening sale prices for the component stocks. In the case of securities traded through the NASDAQ system, the first reported sale price will be used. As trading begins in each of the Index's component securities, its opening sale price is captured for use in the calculation. Once all the component stocks have opened, the value of the Index is determined and that value is used as the settlement value for the option. If any of the component stocks does not open for trading in its primary market on the last trading day before expiration, then the prior day's last sale price is used in the calculation.

Eligibility Standards for Index Components

Amex Rule 901C specifies criteria for inclusion of stocks in an index on which options will be traded on the Exchange. In choosing among HMO stocks that meet the minimum criteria set forth in Rule 901C, the Exchange will focus on stocks that (1) have a minimum market value (in U.S. dollars) of at least $75 million,[8] (2) have an average monthly trading volume in the U.S. markets over the previous six month period of not less than 1 million shares (or ADRs), and (3) are traded on either the NYSE, Amex (subject to limitations of Rule 901C) or NASDAQ. Although the stocks currently selected for inclusion in the HMO Index meet or surpass the above additional criteria, the Exchange intends these additional criteria to be guidelines only and reserves the right to include stocks in the Index that may not meet these guidelines. All Index component securities currently have market capitalizations in excess of $1 billion, with the largest being $6.9 billion. Average monthly trading volume over the previous six months for the individual component stocks ranged from 3.5 million to 43.3 million shares. The five most heavily weighted components account for approximately 73% of the total Index weight, with the largest representing 24.7%.

Exchange Rules Applicable to Stock Index Options

Amex Rules 900C through 980C will apply to option contracts based on the HMO Index. These rules cover issues such as surveillance, exercise prices, and position limits. The Index is deemed to be a Stock Index Option under Amex Rule 900C(a) and a Stock Index Industry Group under Rule 900C(b)(1). Under Rule 903C, the Exchange intends to list up to three near calendar months and two additional calendar months in the three month intervals in the January cycle. The Exchange proposes to codify in Amex Rule 904C that for HMO Index options, the position limit will be 5,500 contracts on the same side of the market.[9]

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

[6] The components of the Index are: United Healthcare Corp.; U.S. Healthcare Inc.; Humana Inc.; Wellpoint Health Networks, Pacificare Health Systems-B; Foundation Health Corp.; Value Health Inc.; Oxford Health Plans; Health Systems Intl. Inc.-A; and Healthsource Inc.

[7] The Amex's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) there must be a minimum of 7,000,000 shares of the underlying security which are owned by persons other than those required to report their security holdings under Section 16(a) of the Act; (2) there must a minimum of 2,000 stockholders; (3) trading volume in the U.S. must have been at least 2.4 million over the preceding twelve months; and (4) the U.S. market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. *See* Amex Rule 915, Commentary 01.

[8] In the case of ADRs this represents market value as measured by total world-wide shares outstanding.

[9] The Amex, selecting the 5,500 contracts position limit for the HMO Index, will not utilize the three tier mechanism set forth in Rule 904C for other narrow-based index options. *See* Amendment No. 1, *supra* note 3.

[10] 15 U.S.C. 78f(b)(5).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at 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 Amex. All submissions should refer to SR–Amex–95–32 and should be submitted by September 29, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22240 Filed 9–7–95; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3(a)(12).

[Release No. 34–36172; File No. SR–NSCC–95–12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Limiting the Use of Letters of Credit to Collateralize Clearing Fund Contributions

August 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 21, 1995, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–NSCC–95–12) as described below. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change increases the minimum cash clearing fund contribution for those members that use letters of credit as clearing fund collateral and sets a limit on the amount of a member's required clearing fund contribution that may be collateralized with letters of credit.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The proposed rule change was originally filed on October 27, 1989, and was approved temporarily through December 31, 1990. Securities Exchange Act Release No. 27664 (January 31, 1990), 55 FR 4297 [File No. SR–NSCC–89–16]. Subsequently, the Commission granted a number of extensions to the temporary approval to allow the Commission and NSCC sufficient time to review and assess the use of letters of credit as clearing fund collateral. Most recently, the Commission extended temporary approval through September 30, 1995. Securities Exchange Act Release No. 34745 (September 29, 1994), 59 FR 50949 [File No. SR–NSCC–94–18].

[3] The Commission has modified the text of the summaries prepared by NSCC.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC is seeking permanent approval of a proposed rule change that modifies the amount of a member's required clearing fund deposit that may be collateralized by letters of credit. Specifically, the proposed rule change increases the minimum cash contribution for any member that uses letters of credit from $50,000 to the greater of $50,000 or 10% of that member's required clearing fund deposit up to a maximum of $1,000,000. In addition, the rule change provides that only 70% of a member's required clearing fund deposit may be collateralized with letters of credit. The rule change also adds headings to the clearing fund formula section of NSCC's rules for purposes of clarity and includes other nonsubstantive drafting changes. The effect of the proposed rule change is to increase the liquidity of the clearing fund and to limit NSCC's exposure to unusual risks resulting from the reliance on letters of credit.

The current status of NSCC's clearing fund[4] as a result of the change in the required clearing fund deposit is that approximately 31.46% of the clearing fund is in cash, approximately 29.32% of the clearing fund is in securities, and approximately 39.22% of the clearing fund is in letters of credit.[5]

When NSCC first filed this change the impetus was to improve NSCC's liquidity resources by requiring additional deposits of cash and cash equivalents. Since that time, NSCC has obtained additional liquidity resources through a line of credit with a major New York clearinghouse bank. NSCC currently has a three hundred million dollar line of credit that can be used for liquidity purposes, and the letters of credit in the NSCC clearing fund are available as collateral for this line of credit. Accordingly, NSCC believes that

[4] These statistics are current as of July 31, 1995. Conversation between Anthony H. Davidson, Esq., NSCC, and Margaret R. Blake, Attorney, Division of Market Regulation, Commission (August 23, 1995).

[5] In October of 1989 when the Commission initially granted temporary approval of NSCC's proposal, letters of credit accounted for 76% of the total dollar value of required clearing fund deposits. By May 28, 1993, letters of credit accounted for less than 30%. During the period from June 1, 1992, to May 28, 1993, letters of credit accounted for an average of 30.49% of the total dollar value of required clearing fund deposits, and for no month during that period did the portion of letters of credit used for required clearing fund deposits rise above 34%. Letter from Karen L. Saperstein, Vice President/Director of Legal & Associate General Counsel, NSCC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation, Commission (June 10, 1993).

it has adequate liquidity resources and requests permanent approval of the change limiting the use of letters of credit to no more than 70% of a member's deposit.

NSCC believes that the proposal is consistent with its requirements under Section 17A of the Act[6] because it enhances NSCC's ability to safeguard securities and funds in its custody or under its control.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No new written comments have been solicited or received.[7] NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with 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 NSCC. All submissions should refer to File No. SR–NSCC–95–12 and should be submitted by September 29, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22241 Filed 9–7–95; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78q–1 (1988).

[7] Since the initial filing of the proposed rule change NSCC has received one letter of comment. In the letter Wedbush Morgan Securities, Inc. opposed NSCC's proposal because they believed it would increase the cost of posting collateral. Letter from Edward W. Wedbush, President, Wedbush Morgan Securities, Inc., to David F. Hoyt, Assistant Secretary, NSCC (November 9, 1989).

[8] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36176; International Series Release No. 847; File No. SR–Phlx–95–43]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Customized Foreign Currency Options Transaction Size

August 31, 1995.

On June 21, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to reduce the minimum transaction size for customized foreign currency options (''Customized FCOs'') from 200 to 100 contracts. Notice of the proposed rule change appeared in the **Federal Register** on July 12, 1995.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

On November 1, 1994, the Commission approved the Exchange's proposal to trade Customized FCOs.[4] The Exchange originally imposed a 300 contract minimum opening transaction size pursuant to Rule 1069(a)(6). Earlier this year, the Exchange reduced the minimum size of opening transactions in Customized FCOs to 200 contracts.[5] The Exchange believes, however, that 200 contracts is still too large for a significant segment of mid-sized corporations (*i.e.*, $1–10 billion in market capitalization) that wish to hedge their currency risk in a cost-effective manner using an exchange-traded Customized FCO. The Exchange, therefore, now proposes to reduce the minimum opening transaction size for Customized FCOs to 100 contracts. At the 100 contract level, this will still provide for substantial minimum opening transaction values for Customized FCOs involving all Phlx approved currencies.[6] Specifically, the values for opening transactions will range from a low of approximately $3.6 million for Customized FCOs based on the Australian dollar to a high of approximately $8.0 million for Customized FCOs based on the ECU.[7]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[8] in that the proposal is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. Specifically, the Commission believes that the proposed rule change is designed to make the Customized FCO market accessible to smaller corporate FCO users while maintaining the focus of this market towards institutional investors. As a result, the Commission believes that the proposal may serve to add liquidity to this market which would benefit all users of Customized FCOs.

Moreover, even with lowering the minimum opening transaction size to 100 contracts, the minimum value of an opening Customized FCO transaction involving any approved currency will be greater than $3 million.[9] The Commission believes that these levels are sufficient to ensure that the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35928 (June 30, 1995), 60 FR 35978 (''Exchange Act Release No. 35928'').

[4] *See* Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994) (''Exchange Act Release No. 34925'').

[5] *See* Securities Exchange Act Release No. 35464 (March 9, 1995), 60 FR 14043 (March 15, 1995).

[6] The currencies for which the Phlx is currently approved to trade FCOs are the Australian dollar, British pound, Canadian dollar, European currency unit (''ECU''), French franc, German mark, Japanese yen, Swiss franc, and U.S. dollar. Additionally, the Phlx has proposed to be able to trade Customized FCOs on the Italian lira and Spanish peseta. *See* Securities Exchange Act Release Nos. 35678 (May 4, 1995), 60 FR 24945 (May 10, 1995) (notice of proposal to trade Customized FCOs on the Italian lira), and 35677 (May 4, 1995), 60 FR 24941 (May 10, 1995) (notice of proposal to trade Customized FCOs on the Spanish peseta).

[7] Based on prevailing exchange rates as of May 16, 1995. *See* Exchange Act Release No. 35928, *supra* note 3.

[8] 15 U.S.C. 78f(b)(5) (1988).

[9] *See supra* note 7 and accompanying text.

Customized FCO market continues to be used almost exclusively by institutional investors. As a result, the Commission believes that this proposal does not raise any regulatory concerns that were not adequately addressed by the Exchange when the Commission approved the trading of Customized FCOs.[10]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–Phlx–95–43) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22325 Filed 9–7–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26366]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

September 1, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 25, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

[10] *See* Exchange Act Release No. 34925, *supra* note 4.

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1994).

Basic Investment, Inc. (31–908)

Basic Investments, Inc. (''Basic Investments''), P.O. Box 2065, Henderson, Nevada 89009, has filed an application for an order exempting it as a holding company under section 3(a)(3) from all provisions of the Act, except section 9(a)(2).

Basic Investments is primarily engaged in real estate development, sales and rental. All of its capital stock is owned by the following entities, in the proportions indicated parenthetically: Kerr-McGee Chemical Corporation (31%), Titanium Metals Corporation (32%), Pioneer Chlor Alkali Company, Inc. (32%), and Chemstar Incorporated (5%) (collectively, ''Industrials''). Basic Investments owns all of the capital stock of three subsidiary companies, Basic Land, Inc. (''Basic Land''), Basic Water Company (''Basic Water''), and Basic Management, Inc. (''Basic Management'').

Basic Management owns an electric power distribution system (''Distribution Network'') solely for the benefit of the Industrials. This distribution system consists of a 13.8 kV and a 4.16 kV circuit, each approximately 6 miles in length. The Industrials purchase electric power from the Colorado River Commission (''River Commission''), which is transmitted by the River Commission to the Distribution Network. Basic Management distributes this power to the Industrials at certain facilities used by the Industrials in a commonly shared site in Nevada. Distribution costs, which in 1993 were approximately $509,000, are charged to the Industrials on a break-even basis.

Basic Management also develops and operates certain real estate properties in Nevada, the revenues from which totaled approximately $4.5 million in 1993. Additionally, Basic Management monitors a sewage system, which generated gross revenues in 1993 of under $100,000.

Basic Land's sole asset is a 50% partnership interest in Victory Valley Land Company, L.P., which is primarily engaged in the development and/or sale of certain real estate property in Nevada. Gross revenues from Victory Valley's operations allocable to Basic Land in 1993 were approximately $5.5 million. Basic Water owns and operates a water delivery system serving both the town of Henderson, Nevada and an industrial complex jointly used by the Industrials. Gross revenues from this water operation in 1993 were approximately $2.1 million.

Basic Management is a ''public-utility company'' within the meaning of the Act. Because of Basic Investment's ownership of Basic Management, Basic Investment is a ''holding company'' within the meaning of the Act. In 1993, Basic Investment's total utility revenue approximated 4% of its combined revenues.

Basic Investment states that it is primarily engaged in businesses other than that of a public utility and that it does not derive a material part of its income from Basic Management's operation of the Distribution Network. Basic Investment further states that, if such revenue were deemed to be material, Basic Investment nonetheless owns all of Basic Management's outstanding capital stock.

Central and South West Corporation, et al. (70–8423)

Central and South West Corporation (''CSW''), a registered holding company, CSW International, Inc. (''CSWI''), a CSW Energy, Inc. (''Energy'') (collectively ''Applicants''), both wholly owned nonutility subsidiary companies of CSW, all located at 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75202, have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13(b), 32 and 33 of the Act and rules 43, 45, 53, 83, 86, 87, 90 and 91 thereunder.

By order dated November 3, 1994 (HCAR No. 26156) (''Order''), the Commission authorized the Applicants, among other things, to: (1) Organize CSWI and other special purpose subsidiaries (''Project Parents''), to invest in exempt wholesale generators (''EWGs''), and foreign utility companies (''FUCOs''), up to $400 million for which there is recourse to CSW (''Aggregate General Authority''), and up to $600 million of nonrecourse debt; and (2) fund such investments from time to time through issuances by CSW, CSWI and/or the Project Parents, including, without limitation, CSW de Mexico S.A. de C.V. (''CSWdM'') and CSW de Mexico Servicios S.A. de C.V. (''CSWdM Servicios''), of stock, partnership interests, promissory notes, commercial paper or other debt or equity securities.

The Applicants now propose to: (1) Increase their authorization under the Aggregate General Authority to an amount equal to 50% of CSW's ''consolidated retained earnings'' as determined in accordance with rule 53(a)(1); and (2) increase the aggregate amount of nonrecourse debt securities that may be issued by CSWI and/or Project Parents (including, without limitation, CSWdM and CSWdM Servicios) to third parties to $3 billion

under the terms and conditions specified in the Order. In addition, the Applicants propose to delete the limitations on the amount of nonrecourse debt that may be denominated in foreign currency.

The Cincinnati Gas and Electric Company (70–8669)

The Cincinnati Gas and Electric Company ''(CG&E''), a wholly owned public-utility subsidiary company of CINergy Corp. (''CINergy''), a registered holding company, both located at 139 East Fourth Street, Cincinnati, Ohio 45202, has filed a declaration under sections 6(a), 7 and 12(e) of the Act and rules 62 and 65 thereunder.

CG&E's amended articles of incorporation (''Articles'') currently provide that, without the consent of the holders of not less than a majority of the total number of shares of preferred stock of all series then outstanding, CG&E shall not issue or assume any securities representing unsecured debt (other than for purposes of refunding outstanding unsecured indebtedness or redeeming or otherwise retiring outstanding shares of stock ranking prior to the preferred stock with respect to the payment of dividends or upon the dissolution, liquidation or winding up of CG&E) if, immediately after such issue or assumption, the total outstanding principal amount of all securities representing unsecured debt would exceed 20% of the aggregate of: (1) the total principal amount of all then outstanding secured debt of CG&E; and (2) the capital and surplus of CG&E, as stated on CG&E's books (''20% Limitation'').

CG&E proposes to submit to the holders of the outstanding shares of preferred stock of all series, and to CINergy, as the sole holder of all the outstanding shares of CG&E common stock, a proposal (''Proposal'') to amend the Articles to eliminate the 20% Limitation. Approval of the Proposal requires the affirmative vote of the holders of not less than two-thirds of the total number of shares of preferred stock of all four series, voting together as one class, and an affirmative two-thirds vote from CINergy as the sole common stock holder. CINergy has informed CG&E that it will vote in favor of the Proposal.

In the event the Proposal fails to receive the requisite affirmative vote, CG&E proposes to seek approval of an alternative proposal amending the Articles to authorize CG&E to issue or assume securities representing unsecured indebtedness in excess of the 20% Limitation through December 1, 2005. Approval of the alternative proposal requires the same affirmative vote as the Proposal.

CG&E proposes to submit the above proposals for consideration and action at a special meeting of stockholders planned to be held on or about November 16, 1995, and, in connection therewith, to solicit proxies from the holders of its capital stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22324 Filed 9–7–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of International Transportation and Trade; Transportation Science and Technology Implementation Arrangement

ACTION: Private sector participation in the U.S. Department of Transportation and Japan's Ministry of Transport Transportation Science and Technology Implementing Arrangement.

BACKGROUND: The Department of Transportation Secretary Federico Peña and his former counterpart, Japan's Minister of Transport Shigeru Ito, signed on February 10, 1994, a Transportation Science and Technology Implementing Arrangement to promote mutually beneficial cooperation in transportation technology. The Implementing Arrangement is designed to establish projects between the U.S. and Japan in all modes of transportation, including intermodalism, safety, environment, transportation for the handicapped and elderly, information-related technology, and other areas as mutually agreed.

The First Annual Meeting of U.S.-Japan transportation experts convened on October 26–27, 1994, in Tokyo, Japan, to discuss/launch project activity on areas relating to all fields of transportation. At the conclusion of the meeting, both parties agreed to seven priority areas for cooperation. These areas are methods to evaluate new design of tankers (oil spill prevention from tankers); marine exhaust emissions; high speed rail transportation; magnetic levitation in rail transport; advanced tunneling technology; transport measures for the mobility handicapped; and intermodalism including an automatic transportation equipment identification system. In addition to the seven priority projects already agreed upon, the United States and Japan are exploring another proposed initiative on emergency management systems/disaster prevention.

SUMMARY: As the Department prepares for the Second Annual Meeting of U.S.-Japan Transportation Experts, this notice sets forth an inquiry to U.S. public and private transportation related companies, research establishments, and academics who are interested in participating in any of the priority areas identified above. Both the U.S. Government and the Government of Japan are eager to have their respective private sector transportation and related technology companies contribute to and benefit from the cooperative exchange.

FOR GENERAL INFORMATION CONTACT: Ms. Phyllis Davis, Office of International Transportation and Trade, telephone (202) 366–9514, U.S. Department of Transportation, 400 7th Street SW., Room 10302, Washington, DC 20590.

SEND INFORMATION TO: Ms. Phyllis Davis, Office of International Transportation and Trade, telephone (202) 366–9514, U.S. Department of Transportation, 400 7th Street SW., Room 10302, Washington, DC 20590.

DEADLINE FOR SUBMISSION OF INFORMATION: Please provide the Department a written summary of the project(s) you may wish to participate in by COB September 29, 1995.

Dated: September 1, 1995.

Nancy K. MacRae,

Deputy Director, Office of International Transportation and Trade.

[FR Doc. 95–22329 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 USC Chapter 35).

DATES: August 31, 1995.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202,

Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Gemma deGuzman, Information Resource Management (IRM) Strategies Division, M–32, Office of the Secretary of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on August 31, 1995:

DOT No: 4110
OMB No: 2137–0052
Administration: Research and Special Programs Administration (RSPA)
Title: Incident and Annual Reports for Gas Pipeline Operators
Need for Information: 49 CFR Section 1915 requires each gas pipeline operator give telephonic notice to an incident at the earliest practicable moment following discovery.
Proposed Use of Information: This information will be used by RSPA to identify significant failures which may require investigation by the Office of Pipeline Safety Enforcement Division or a state agency pursuant to a certification under action 5(a).
Frequency: Once a year and on occasion
Respondents: Gas Pipeline Operators
Number of Respondents: 2,700
Burden Estimate: 7,023 hours
Form(s): DOT 7100.1, 7100.2, 7100.2–1
Average Burden Hours Per Response: 2.6 hours

DOT No: 4111
OMB No: 2115–0076
Administration: United States Coast Guard
Title: Security Zones, Regulated Navigation Areas and Safety
Need for Information: Under (1) Executive Order 10173, gives Coast Guard the authority to prescribe procedure for establishing security zones on areas of land, water, or land and water, (2) The Port and Tanker Safety Act, Coast Guard has the authority to prescribe special regulations to control vessel traffic in areas determined to be hazardous, and (3) The Ports and Waterways Safety Act, Coast Guard has the authority to prescribe regulation to allow for the designation of safety zones.
Proposed Use of Information: The information will be used by the Coast Guard to assess the need to establish security zones, safety zones or regulated navigation areas.
Frequency: On occasion
Burden Estimate: 929 hours
Respondents: Waterway users
Number of Respondents: 743
Form(s): None
Average Burden Hours Per Response: 1 hour and 25 minutes

DOT No: 4112
OMB No: 2133–0506
Administration: Maritime Administration (MARAD)
Title: Merchant Marine Medals and Awards
Need for Information: Required by Public Law 100–324, this information collection provides a method of documenting requests for merchant marine medals and awards.
Proposed Use of Information: The information received is used by MARAD personnel to assist in processing and verifying requests for seamen's service awards.
Frequency: On occasion
Burden Estimate: 3,000 hours
Respondents: Crew members of United States ships
Number of Respondents: 3,000
Form(s): None
Average Burden Hours Per Response: 1 hour

DOT No: 4113
OMB No: 2115–0553
Administration: United States Coast Guard
Title: 33 CFR 140.15 Equivalents and Approved Equipment
Need for Information: Under 33 CFR Subchapter N, Coast Guard will implement the best available and safest technological concept to comply with Section 21 of the Outer Continental Shelf (OCS) Land Act.
Proposed Use of Information: This information will be used by the Coast Guard for comparison with existing standards or procedures to ensure that an equivalent level of safety is maintained as provided for in the regulations.
Frequency: On occasion
Burden Estimate: 100 hours
Respondents: Owners, operators, equipment manufacturers and subcontractors
Number of Respondents: 10
Form(s): None
Average Burden Hours Per Response: 10 hours

DOT No: 4114
OMB No: 2110–0536
Administration: Federal Aviation Administration
Title: Implementation of the Equal Access to Justice Act
Need for Information: 14 CFR Subpart B, Part 14.10 implements procedures for the application of awards under the Equal Access to Justice Act (EAJA). The EAJA provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to administrative proceedings before government agencies and who prevail over the government.
Proposed Use of Information: This information will be used to determine whether the applicant is eligible to receive an award under the EAJA.
Frequency: As required
Burden Estimate: 210 hours annually
Respondents: Individuals and businesses
Number of Respondents: 21
Form(s): None
Average Burden Hours Per Response: 5 hours

DOT No: 4115
OMB No: 2105–0517
Administration: Office of the Secretary
Title: Amendment to Transportation Acquisition Regulation (48 CFR)
Need for Information: 48 CFR 1213.70; 1237.70; 1252.237–71; and 1252.237–72 will require contracting officers to obtain and evaluate, qualification or other pertinent information when it is necessary to determine whether offerors have the capability to perform services under a proposed contract.
Proposed Use of Information: This information will be used by OST to evaluate offerors' capability statements and data submitted per the requirement of the solicitation or request for quotation.
Frequency: On occasion
Burden Estimate: 57,167 hours
Respondents: Individuals or households, Businesses or other for-profit, small businesses or organizations
Number of Respondents: 792
Form(s): None

Average Burden Hours Per Response: 1 hour

Issued in Washington, D.C. on August 31, 1995.

Jim Harrell,

Computer Specialist, Information Resource Management (IRM) Strategies Division.

[FR Doc. 95–22199 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Cincinnati/Northern Kentucky International Airport, Covington, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Cincinnati/Northern Kentucky International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 10, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131–0301.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert F. Holscher, Director of Aviation of the Cincinnati/Northern Kentucky International Airport at the following address: Kenton County Airport Board, Second Floor, Terminal 1, Cincinnati/Northern Kentucky International Airport, 2939 Terminal Drive, Hebron, Kentucky 41048.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Kenton County Airport Board under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Planner, Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131–0301. (901) 544–3495. The application may be reviewed in person at this location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Cincinnati/Northern Kentucky International Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 31, 1995, FAA determined that the application to impose and use the revenue from a PFC submitted by the Kenton County Airport Board was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 29, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: February 1, 1996
Proposed charge expiration date: August 31, 2000
Total estimated PFC revenue: $117,182,000

Brief description of proposed project(s):

Impose and Use

1. Noise Compatibility Land Use Management Measures (Phase 2).

A. Voluntary Acquisition in the 65/75 LDN, Northwest.

B. Purchase Assurance/Sound Insulation in the 65 to 75 LDN, Southeast.

C. Purchase Assurance/Sound Insulation in the 65 to 75 LDN, Southwest.

2. Runway 18R/36L Extension-1,500 Feet and Related Rehabilitation. Construction of a 1,500 foot extension to the north end of Runway 18R/36L and parallel taxiway and extensive rehabilitation and/or reconstruction of the entire existing 9,500-foot runway and existing taxiways and connectors.

3. Debt Service Cost. This project represents debt service cost related to the issuance of proposed revenue bonds which are to be backed by PFC revenue.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs:

1. FAR Part 121 Supplemental Operators which operate at the airport without an operating agreement with the Board and enplane less than 1,500 passengers per year.

2. FAR Part 135 on-demand air taxi/commercial operators, both fixed wing and rotary.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Cincinnati/Northern Kentucky International Airport.

Issued in Memphis, Tennessee, on August 31, 1995.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 95–22365 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Issuance of Final Determination Concerning Electrical Raceways

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that Customs has issued a final determination concerning the country of origin of electrical raceways which are to be offered to the United States Government under an undesignated government procurement contract. The final determination found that based upon the facts presented, the country of origin of electrical raceways which are manufactured in Canada from Canadian and foreign components is Canada.

DATES: The final determination was issued on August 24, 1995. Any party-at-interest, as defined at 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of September 8, 1995. A copy of the nonconfidential portions of this final determination will be published in the Customs Bulletin.

FOR FURTHER INFORMATION CONTACT: Anthony A. Tonucci, Attorney-Advisor, Office of Regulations and Rulings (202) 482–7073.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on August 24, 1995, pursuant to Subpart B of Part 177, Customs Regulations (19 CFR Part 177, Subpart B), Customs issued a final determination concerning the country of origin of electrical raceways which are to be offered to the United States Government under an undesignated government procurement contract. The U.S. Customs ruling number is HQ 559089. This final determination was issued at the request of Wiremold Canada, Inc., under procedures set forth at 19 CFR 177 Subpart B, which

implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). The final determination concluded that based upon the facts presented, foreign materials consisting of stainless steel, aluminum sheeting and other small parts, which are further processed and assembled into electrical raceways in Canada, are substantially transformed as a result of the Canadian operations. Accordingly, the country of origin of the electrical raceways is Canada. This document gives notice pursuant to section 177.29, Customs Regulations (19 CFR 177.29), of that final determination. Pursuant to 19 CFR 177.30, any party-at-interest, as defined at 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of (date of publication in the **Federal Register**). Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that Customs reexamine the matter anew and issue a new final determination.

Dated: August 24, 1995.

Harvey B. Fox,

Director, Office of Regulations And Rulings.

[FR Doc. 95–22254 Filed 9–7–95; 8:45 am]

BILLING CODE 4820–02–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 174
Friday, September 8, 1995

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).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 1:00–2:00 p.m.

PLACE: Lehmann Brothers.

DATE: Monday, September 18, 1995.

STATUS: Open.

Agenda

1:00 p.m.
Chairman's Report
1:15 p.m.
President's Report
1:30 p.m.
Executive Session (Closed)

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

William R. Ford,
President.
[FR Doc. 95–22459 Filed 9–6–95; 11:42 am]
BILLING CODE 6116–01–P–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, September 14, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–22466 Filed 9–6–95; 1:09 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Thursday, September 14, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–22467 Filed 9–6–95; 1:09 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10: a.m., Thursday, September 21, 1995.

PLACE: 2033 K St. N.W., Washington, D.C. Lower Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Final rules on Part 36, Contract Market Transactions.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–22468 Filed 9–6–95; 1:09 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, September 22, 1995.

PLACE: 2033 K St. NW., Washington, DC. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
FR Doc. 95–22469 Filed 9–6–95; 1:09 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, September 28, 1995.

PLACE: 2033 K St., NW., Washington, DC. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–22470 Filed 9–6–95; 1:09 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, September 29, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–22471 Filed 9–6–95; 1:09 pm]
BILLING CODE 6351–01–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 10:02 a.m. on Tuesday, September 5, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following

Matters relating to the Corporation's supervisory activities.
Recommendation regarding an administrative enforcement proceeding.
Personnel matters.

Incalling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, 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) (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) (ii), and (c)(9)(B)).The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: September 5, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,
Assistant Executive Secretary.
[FR Doc. 95–22444 Filed 9–6–95; 10:48 am]
BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 13, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–22439 Filed 9–6–95; 10:17 am]

BILLING CODE 6210–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Meeting of the Board of Directors

TIME AND DATE; 10:00 a.m., Wednesday, September 20, 1995.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street NW., Suite 800, Board Room, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, 202/376–2441.

Agenda

I. Call to Order
II. Approval of Minutes:
  May 25, 1995, 17th Annual Meeting
III. Budget Committee Report:
  July 21, 1995, Meeting
  a. Proposed FY 1995 Final Budget Reallocations
  b. Proposed FY 1996 Budget Request
  c. Proposed FY 1997 Office of Management and Budget Submission
IV. Treasurer's Report
V. Executive Director's Quarterly Management Report
VI. Adjourn

Jeffrey T. Bryson

General Counsel/Secretary.

[FR Doc. 95–22440 Filed 9–6–95; 10:18 am]

BILLING CODE 7570–01–M

Corrections

Federal Register

Vol. 60, No. 174

Friday, September 8, 1995

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 HEALTH AND HUMAN SERVICES

Administration for Children and Families

RIN 0979–AB58

Title IV–B and Title IV–E of the Social Security Act: Data Collection for Foster Care and Adoption

Correction

In rule document 95–19679 beginning on page 40505 in the issue of Wednesday, August 9, 1995, make the following correction:

Appendix A—[Corrected]

On page 40507, in the third column, in Section I, in the second line, element ''XIII.'' should read ''XII.''

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95D–0131]

''Point to Consider in the Manufacture and Testing of Therapeutic Products for Human Use Derived From Transgenic Animals (1995);'' Availability

Correction

In notice document 95–20964 appearing on page 44036 in the issue of Thursday, August 24, 1995, make the following correction:

In the third column, above the FR Doc. line, the title line should appear as follows:

''Acting Deputy Commissioner for Policy.''

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Minneapolis-St. Paul International Airport, Minneapolis, MN

Correction

In notice document 95–21531 beginning on page 45208 in the issue of Wednesday, August 30, 1995 make the following correction:

On page 45208, in the third column, in the **DATES** section, in the second line ''August 29, 1995'' should read ''September 29, 1995''.

BILLING CODE 1505–01–D

federal register

Friday
September 8, 1995

Part II

Department of Agriculture

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest System Timber; Administration of Timber Export and Substitution Restrictions; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596–AB22

Sale and Disposal of National Forest System Timber; Administration of Timber Export and Substitution Restrictions

AGENCY: Forest Service, USDA.

ACTION: Final rule with request for comments.

SUMMARY: This final rule implements the Forest Resources Conservation and Shortage Relief Act of 1990 (Act). It defines certain terms necessary to facilitate uniform compliance; prohibits transfer of unprocessed private timber for export by a person who possesses or acquires unprocessed Federal timber; prohibits export of such unprocessed private timber by a third or successive parties; prescribes procedures for reporting the acquisition and disposition of Federal and private timber, including transfers; prescribes procedures for identifying unprocessed Federal and private timber requiring domestic processing; establishes procedures for assessing civil and criminal penalties and applying administrative remedies for violations of the Act, its implementing regulations, and contracts issued under the Act; and authorizes Regional Foresters' entry into cooperative agreements with other agencies.

This comprehensive rule incorporates, with some changes, the provisions of the interim rule published November 20, 1990 (55 FR 48572) which established sourcing area procedures; continued surplus species determinations; and continued the existing reporting procedures applicable to timber sale contracts awarded prior to August 20, 1990. This comprehensive rule also incorporates the final rule of limited scope, published December 19, 1991 (56 FR 65834), which: Continued the existing reporting procedures applicable to timber sale contracts awarded prior to August 20, 1990; amended the interim rule for sourcing area disapproval and review procedures; and established application procedures for persons applying for a share of the limited amount of unprocessed timber originating from National Forest System lands in the State of Washington that are exempted from the prohibition against indirect substitution. This comprehensive rule also establishes the specific quotas for indirect substitution in Washington State. This comprehensive rule fully implements the Act, except for the determination of surplus species, pursuant to 16 U.S.C. 620a(b). The intended effect of this rule making is to conserve public timber resources and help relieve domestic timber supply shortages by implementing the provisions of the Forest Resources Conservation and Shortage Relief Act of 1990.

Given the scope of this final, comprehensive rule making, the Department is seeking public comment on any ''fine tuning'' of the regulations that may be necessary for more efficient implementation. This request for public comment in no way affects the finality of this rulemaking.

DATES: This rule is effective September 8, 1995. Comments must be received in writing by October 10, 1995.

ADDRESSES: Send written comments to Jack Ward Thomas, Chief (2400), Forest Service, USDA, P0 Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this final rule in the Office of the Director, Timber Management Staff, Forest Service, USDA, 201 14th Street SW., Washington, DC 20250, between the hours of 8:30 a.m. and 4:30 p.m. Parties wishing to view comments are encouraged to call ahead ((202) 205–0893) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Rex Baumback, Timber Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–0855.

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Background

The Forest Resources Conservation and Shortage Relief Act of August 20, 1990 (16 U.S.C. 620, *et seq.*), hereafter referred to as the Act, prohibits the export of unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States and restricts direct and indirect substitution of unprocessed Federal timber for timber exported from private lands. Prior to the passage of the 1990 Act, the prohibitions against exporting unprocessed timber harvested from Federal lands had been renewed annually by the Appropriations Act for Interior and Related Agencies, under which Forest Service programs are funded. The Act replaces this annual renewal requirement for contracts awarded on or after the date of enactment of the Act. The specific limitations established in the new Act are described under the applicable regulatory sections.

To meet certain statutory deadlines, the Forest Service published a notice of statutory restrictions in the **Federal Register** on September 17, 1990, (55 FR 36123) followed by publication of several rules, a summary of which follows:

1. An interim rule was published November 20, 1990, (55 FR 48572) to comply with statutory requirements which took effect before this final rule could be issued. The interim rule contained definitions necessary to facilitate uniform compliance, procedures for certifying exemption of a person from the prohibitions against substitution if that person had exported unprocessed private timber in the previous 24 months, and sourcing area application procedures. It also continued the status of existing surplus species until the Secretary could receive public comments and make new surplus species determinations, and continued reporting procedures in effect for contracts awarded prior to enactment of the Act.

2. A proposed comprehensive rule was published January 29, 1991, (56 FR 3354) to fully implement the Act. This proposed rule included procedures for monitoring compliance with the Act and enforcing the prohibition against indirect substitution. Also included were procedures for reporting the acquisition and disposition of unprocessed timber, for documenting transfers, for identifying and marking Federal and private timber required to be domestically processed, procedures for assessing civil and criminal penalties and applying administrative remedies for violations of the Act; revised regulations for debarment and contract suspension, definitions necessary to assure uniform compliance with the Act, provisions for cooperating with other agencies, and procedures for determining surplus species.

3. A proposed rule of limited scope was published January 29, 1991, (56 FR 3375) to implement certain provisions required to take effect before this final comprehensive rule could be adopted. The proposed rule contained regulations for continuing the reporting requirement in timber sale contracts awarded prior to August 20, 1990, establishing sourcing area disapproval and review procedures, and establishing application procedures for indirect substitution prohibition exceptions for persons who acquired unprocessed timber from National Forest System lands in the State of Washington. The final rule of limited scope was issued December 19, 1991 (56 FR 65834).

4. A final rule delegating the Secretary of Agriculture's authority to make the

final decision on sourcing area applications received by December 20, 1990 to the Department's Office of Administrative Law Judges (OALJ) was published April 5, 1991 (56 FR 14009);

5. A final rule was published on May 14, 1991 (56 FR 22105), amending the Department's rules of practice governing formal adjudicatory proceedings instituted by the Secretary under various statutes to include log export and substitution disputes arising from the Act.

6. A final rule was published on April 2, 1992 (57 FR 11261), which delegates the Secretary's authority to adjudicate sourcing area applications received after December 20, 1990 to the Department's Office of Administrative Law Judges and the Judicial Officer.

7. A final rule was published on February 24, 1994 (59 FR 8823), which establishes the procedures for adjudicating and reviewing sourcing areas.

This final rule, in combination with the final rule published December 19, 1991, (56 FR 65834) completes the implementation process, except for the determination of surplus species pursuant to 489(b) of the Act (16 U.S.C. 630a(b)).

Contents of comprehensive rule. This final rule contains the following:

1. Requirements of bidders concerning exports;
2. Suspension and debarment of timber purchasers;
3. Definitions necessary to fully implement the Act;
4. Prohibition against export of unprocessed Federal timber;
5. Prohibitions against the transfer of unprocessed private timber for export by a person who also holds or acquires unprocessed Federal timber, and prohibitions against export of unprocessed private timber that requires domestic processing;
6. Sourcing area application procedures;
7. Incorporation of sourcing area disapproval and review procedures;
8. Incorporation of procedures for a non-manufacturer to apply for a waiver of the prohibition against substitution in the preceding 24 months if the person certified by November 20, 1990 that he/she would cease exporting by February 20, 1991;
9. Procedures for reporting the acquisition and disposition of Federal timber and procedures for documenting transfers of unprocessed Federal and private timber requiring domestic processing;
10. Procedures for identifying unprocessed timber requiring domestic processing;
11. Civil and criminal penalties for violations of the Act or regulations issued under the Act, and procedures for assessment of civil and criminal penalties for violations of the Act or regulations issued under the Act;
12. Administrative remedies for violations of the Act or its implementing regulations, or contracts issued under the Act;
13. Authority for Regional Foresters to enter into cooperative agreements with other agencies;
14. Continuation of surplus species determinations pending a separate rule making; and
15. Incorporation of the rule regarding the indirect substitution exception in Washington State.

Summary of Comments and Responses

The Forest Service requested comments on the interim rule published November 20, 1990. The comment period for the interim rule closed December 20, 1990. Subsequently, as previously noted, the Forest Service published a proposed comprehensive rule to implement the remaining provisions of Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) in the **Federal Register** on January 29, 1991 (56 FR 3354). The comment period on the proposed rule closed March 15, 1991. The comments received on the interim rule have been considered along with those received on the proposed rule.

Comments were received from 89 respondents who made numerous comments relating to 17 separate subjects. All relevant comments have been given full consideration in adoption of this final rule. Comments were received from 66 timber sale purchasers; 12 timber industry associations; three timber trade associations; two environmental organizations; two law firms; one private citizen; one forestry and marketing consultant; one port district; and one Federal agency, the U.S. Department of the Interior, Bureau of Land Management. With the exception of Bureau of Land Management, all respondents were from the western United States or from associations and entities representing western interests.

General Comments

Most respondents expressed general support for the Act and agreed that aggressive enforcement of the export restrictions on unprocessed Federal timber was necessary. However, most respondents also strongly opposed, as being excessively costly and unnecessarily burdensome, the proposed procedures for reporting and record keeping and for identifying and marking unprocessed Federal and private timber. Many of these respondents offered constructive suggestions to reduce these costs and burdens. In addition, approximately half of the comments received from all respondents requested or suggested clarifications of proposed procedures and definitions of terms used in various sections of the proposed rule.

The proposed rule also requested nominations of surplus species, and specifically requested comments on the current determinations that Alaska Yellow Cedar and Port Orford Cedar are surplus to domestic manufacturing needs. Several respondents expressed opposition to continuing the determination that these species are surplus. Two respondents requested that Pacific Yew be considered surplus, and one requested that Western/Rocky Mountain Juniper be considered surplus. A separate proposed rule making will address surplus species.

Other respondents expressed strong opposition to the exporting of unprocessed timber from any source—Federal, other public and private lands—and to all forms of substitution of Federal and other public timber for exported private timber.

Comments by Section of the Proposed Rule

The following is a section-by-section summary of comments and the Department's responses to these in the final rule.

Amendment of Title 36, Part 223, Subpart B

This subpart provides the policies and procedures for planning, preparing, appraising, advertising, bidding, awarding and administering timber sale contracts. No comments were received specifically addressing these topics, however upon review of comments addressing the reporting requirements in the proposed rule, it became apparent that the requirements of prospective bidders for reporting prior export activities in the existing rule at § 223.87 were made obsolete by the passage of the new Act and the publication of this final rule. These reporting requirements have been removed in this final rule. This rule substitutes new reporting requirements that are consistent with the Act for contracts issued on or after August 20, 1990.

Section 223.87 Requirements of Bidders Concerning Exports

Section 223.87 in the existing rule required bidders to submit with their

bid for National Forest timber, as a condition of bid acceptance, a certification and report listing the disposition of all National Forest timber harvested in the previous calendar year; the amount of timber harvested by the bidder from private lands within the bidder's tributary area that was exported or sold for export during the previous calendar year; the locations of manufacturing facilities where the unprocessed timber was expected to be delivered; and the bases of historic purchase and export quotas. Further, § 223.87 required the bidder to notify the Forest Service of changes in destination of unprocessed timber after award of the contract. This report and certification were done on Forest Service form number FS–2400–43 (OMB No. 0596–0021) to be submitted with the completed bid form. If the FS–2400–43 form was not included with the bid or was not properly completed and signed, the bid could be declared nonresponsive.

Section 223.87 of this final rule would eliminate this certification and reporting requirement and the use of form FS–2400–43. Section 223.87 requires, for a bid to be considered responsive, a certification that (1) the bidder is eligible to acquire unprocessed timber originating from National Forest System lands west of the 100th meridian in the contiguous 48 States, in accordance with the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) and its implementing regulations, and (2) the bidder is in compliance with the provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 and its implementing regulations. The reporting requirements in the current bid form are required in the transfer documents and annual report provisions in this rule, so there is no need to collect the information in the bid form. The certification statement is presently part of Forest Service bid form No. FS–2400–14 (1/94). The Office of Management and Budget approved the use of a bid form containing the certification statement regarding compliance through February 28, 1997, and assigned it Control Number 0596–0066. The current bid form was recently revised to add the sentence about eligibility to purchase National Forest System timber consistent with the Act and the regulations. If the bidder is an exporter of unprocessed timber originating west of the 100th meridian in the contiguous 48 States, eligibility includes having an exemption from the prohibition against substitution that would allow the acquisition of unprocessed Federal timber, pursuant to the Forest Resource Conservation and Shortage Relief Act of 1990 and its implementing regulations.

Amendment of Title 36, Part 223, Subpart C

This subpart provides policies and procedures governing suspension and debarment of purchasers of National Forest System timber. It provides for listing of debarred and suspended purchasers and sets forth the causes and procedures for debarment and suspension and for determining the scope, duration, and treatment to be accorded to purchasers listed as debarred or suspended. No comments were received on proposed §§ 223.130, 223.131, 223.133, 223.135, 223.137, and 223.139. Except for minor changes to the text to improve technical and editorial clarity, the Department adopts these sections as proposed.

Section 223.136 Debarment

Section 223.136(b) of the current regulations establishes the effect of a proposed debarment on purchasers of Forest Service timber sale contracts. The current regulations state that, upon issuance of a notice of proposed debarment and until the final debarment decision is rendered, the person proposed for debarment shall not be allowed to bid on or receive new contracts or be granted contract term extensions.

The proposed rule specified that, upon issuance of a notice of proposed debarment, persons violating the Act or any contract or regulation issued under the Act, would not be allowed to enter into any contract to purchase unprocessed timber originating from Federal lands and would not be allowed to take delivery of unprocessed Federal timber from another party who purchased such timber until the debarment proceedings were completed.

Comment. Five respondents stated that it would be unfair if debarment were implemented without prior hearings or opportunity to comment. These respondents were concerned that the affected parties would not have the opportunity to respond to the causes upon which the proposed debarment action was based. Several respondents suggested that such a deprivation would be a violation of the due process clause of the Constitution.

Response. This proposed addition, which prohibits a person proposed for debarment from acquiring timber originating from Federal lands would not alter the procedures for debarment set forth in § 223.138, which establishes the process that Debarment Officers and affected individuals must follow when debarment is being considered. Thus, affected parties would continue to have the opportunity to present information and arguments in opposition to, or in mitigation of the proposed debarment prior to the final debarment determination.

The standard of evidence for debarment (§ 223.138(b)(6)) is a preponderance of the evidence. This standard is deemed met where the cause for debarment is conviction or civil judgment. Where the evidence is sufficient to issue a notice of proposed debarment, good cause exists to protect Government and public interests by not initiating or extending further business dealings with that purchaser.

Further, the process prescribed in the rules provides the due process required by the Constitution. This process is consistent with Government-wide policies and procedures and has been upheld upon judicial review. A trial-type hearing is not required prior to a final debarment decision, unless a dispute of a material fact is raised. Further, the effects of a proposed debarment are limited by the prescribed time for issuance of a final debarment decision. Accordingly, the Department is adopting the revision to § 223.136 as proposed.

Comment. Several respondents suggested that any limitation of rights on a purchaser's existing contracts be deferred until completion of debarment proceedings.

Response. The effect of a proposed debarment is that a purchaser is precluded from consideration of bids on future timber sale contracts, award of future contracts, approval of third party agreements, or extensions of existing contracts, except pursuant to the terms of a contract term adjustment. A purchaser proposed for debarment pursuant to § 223.137(g) is precluded from entering into any contract to purchase unprocessed timber from Federal lands and is also precluded from taking delivery of Federal timber purchased by another person.

The rules do not limit a purchaser's rights on any existing contracts, except with respect to contract extensions. The Forest Service is not obligated to grant contract extensions. There may be situations when refusal to extend the duration of an existing timber sale contract is necessary to protect the Government's interest. If such protective action is not needed, the rule provides that the Chief of the Forest Service or authorized representative may determine that there is a compelling reason to extend an existing contract's term. Therefore, the final rule retains

the provision relating to extending the duration of an existing timber sale contract.

Comment. One respondent suggested that purchasers are subject to substantial penalties once a notice of debarment is issued. This respondent asserted that presumptions of guilt or wrongdoing are made prior to an adjudication of a person's rights and that such a system constitutes de facto debarment, is punitive and is impermissible.

Response. The Department realizes that debarment is a serious action. Debarment is, however, a separate administrative action that is not to be confused with criminal, civil or other administrative proceedings that may have punitive effects. Debarment is taken only to protect the Government's and the public's interests and, as a matter of law, is not taken with the intent to punish. Debarment actions are taken only as a means of ensuring that the Government only does business with responsible persons.

The effects of a proposed debarment, by virtue of the process that has been put into place, are not punitive. Once causes for debarment have been established sufficient to issue a notice of proposed debarment, the Government is justified in not conducting further business dealings with a person proposed for debarment, except on existing contracts. The Department also is authorized under the Act to preclude any person who violates the Act, or any regulation or contract issued under the Act from taking delivery of Federal timber purchased by another party.

The due process required by the Constitution is contained in the debarment procedures and is sufficient to avoid penalizing persons proposed for debarment. The procedures contained in the rule provide firm deadlines for the debarring official's final debarment determination. The procedures also allow an opportunity to respond to the proposed debarment, an opportunity for a fact-finding hearing when a dispute over a material fact is raised, and the procedures allow for reconsideration of the debarring official's final debarment determination, as well as appeal to the U.S. Department of Agriculture Board of Contract Appeals (36 CFR 223.138). The effect of a proposed debarment is not punitive. Therefore, except for minor changes to the text to improve technical and editorial clarity, the Department adopts this section as proposed.

Comment. One respondent suggested that the effect of a proposed debarment is the same as debarment and therefore, a purchaser is automatically debarred based on the notice of proposed debarment.

Response. As stated previously, a notice of proposed debarment has the effect of excluding persons from further business dealings pending a final debarment decision. Again, where evidence is sufficient to issue a notice of proposed debarment, good cause exists to protect the Government and public interests by not initiating or extending further business dealings during the period of proposed debarment.

Further, the rules allow persons to submit, either in person or in writing, or through a representative, information and argument in opposition to the proposed debarment. Such persons also may submit evidence of mitigating factors and arguments concerning the imposition, scope, duration or effects of a proposed debarment or debarment. Based on such information, the debarring official may determine that causes for debarment do not exist, that only certain persons or divisions of an organization or company should be debarred, or that a period of less than the maximum allowed may be appropriate. If the information and arguments in opposition, or the mitigating factors are not persuasive, the period of debarment may be effective retroactively from the date of the notice of proposed debarment, that is, a person would not necessarily be proposed for debarment for a period of time and then have an additional three (3) to five (5) year debarment period added on to the time that has already passed during the period of the proposed debarment; any period of debarment may encompass the period of proposed debarment.

Comment. One respondent asserted that some companies or organizations may have separate divisions in various locations and that debarment may not be appropriate for all divisions of a company or its affiliates.

Response. There may be some situations where debarment of all organizational elements of a company or its affiliates would be inappropriate. The rules provide that persons may provide evidence of mitigating factors demonstrating that certain organizational elements or affiliates should not be debarred. However, unless specifically limited, debarment applies to all divisions or organizational elements of a purchaser and any affiliate who is specifically named, given written notice and an opportunity to respond. The rule allows an affiliate to challenge the basis for its debarment, not just its status as an affiliate. *See* § 223.138(b)(1).

Comment. One individual suggested the Forest Service should help parties understand the intent and explain unclear aspects of the rule and stated that the Bureau of Land Management has always been willing to help parties to understand the rules and advise whether a proposed sale complies with its rules.

Response. The Department agrees that the Forest Service should help parties understand the Act and implementing rules; however, the Forest Service cannot give legal advice to timber purchasers. For legal interpretation of the Act or implementing regulations as they pertain to private business proposals, purchasers are advised to seek private counsel.

Amendment of Title 36, Part 223, Subpart D

Subpart D of part 223 governs timber export and substitution restrictions applicable to Federal timber purchases made before the Act. Enactment of the statute and adoption of interim regulations necessitated the addition of a new § 223.159 to existing subpart D in the interim rule to make clear that the provisions of subpart D remained in effect for contracts awarded before August 20, 1990. Section 223.159 of this final rule clarifies that § 223.162 remains in effect for all contracts awarded on or after August 20, 1990 until September 8, 1995. Section 223.159 of this final rule clarifies that certain rules in subpart F of part 223, which implemented the timber export and substitution restrictions of the Act in the interim rule, apply immediately to all contracts awarded on or after August 20, 1990. Minor technical and editorial changes to § 223.159 have been made to improve clarity. This final rule removes § 223.161, *Limitations on timber harvested in Alaska,* and § 223.163, *Determination that unprocessed timber is surplus to domestic needs.* The subjects covered in these sections are now covered in §§ 223.200 and 223.201 in subpart F.

Several respondents advised that the rule needs to clarify definitions and prohibitions in subpart D. However, since the terms are relevant to the new comprehensive rule, rather than those in effect at the time the new Act passed, the definitions identified by the public through submitted comments are addressed in § 223.186.

Amendment of Title 36, Part 223, Subpart F

The rules in Subpart F implement provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) that became effective upon enactment or as otherwise specified in the Act, and

incorporate and supplement the interim rules of this Subpart that were published in the **Federal Register** on November 20, 1990 (55 FR 48572). Except as otherwise provided in the Act, this Subpart will govern timber export and substitution restrictions applicable to Federal timber sale contract awarded on or after August 20, 1990.

Section 223.185 Scope and Applicability

Comment. One individual commented that the regulations do not adequately explain the differences between the old and new regulations. Another respondent was unclear as to which contracts the substitution provisions in this regulation apply.

Response. Section 497 of the Act (16 U.S.C. 620h) provides that nothing in this Act, or regulations issued under this Act, abrogates or affects any timber sale contract entered into before August 20, 1990.

Section 494 of the Act (16 U.S.C. 620 note) states that the provisions of the Act take effect on the date of enactment, except as otherwise provided. Section 490(a)(2)(A) of the Act (16 U.S.C. 620b) specifically provides that the substitution rules in effect before issuance of regulations to carry out the provisions of § 490(a) will continue to govern all contracts entered into between the purchaser and the Secretary of Agriculture before issuance of final rules. The prior rule concerned *direct* substitution only (36 CFR 223.162). Therefore, contracts awarded after enactment, but before the issuance of final rules continue to be governed by the rules concerning substitution in existence prior to enactment at § 223.162. As these contracts are completed, this regulation will no longer be effective, and will be removed or revised at that time. Contracts awarded on or after September 8, 1995 are governed in full by subpart F.

Section 490(b)(1) of the Act (16 U.S.C. 620b) states that, as of September 10, 1990, a person is prohibited from purchasing federal timber indirectly if that person would be prohibited from purchasing Federal timber directly. Contracts entered into before the date of publication of this final rule are governed by the substitution restrictions in effect before enactment of the Act. Federal timber purchased pursuant to a contract entered into before September 8, 1995 may be purchased indirectly only if the timber could be purchased directly under the prior rule.

Section 490(b)(2)(D) of the Act (16 U.S.C. 620b) delayed application of the indirect substitution restrictions in the State of Washington until rules were issued to ''carry out'' the exemption from indirect substitution in Washington State. Therefore, the indirect substitution restrictions for National Forest System timber from Washington State are effective for contracts entered into between the purchaser and the Secretary of Agriculture as of publication of the rule of limited scope (56 FR 3375, December 19, 1991). This rule establishes the shares of exempted timber for specific persons.

The interim rule was the final rule for the provisions contained in that rule: Sourcing area applications, disapproval and review procedures, procedures for a non-manufacturer, certification procedures, continue surplus species determinations, and definitions applicable to the provisions of the interim rule (55 FR 48572, November 20, 1990). The interim rule has now been incorporated into this final rule, with changes as noted.

A final rule of limited scope was published on December 19, 1991 (56 FR 65834). This rule continued the reporting requirements applicable to contracts awarded before enactment, amended the rules for sourcing area disapproval and review procedures found in the interim rule and established procedures for persons applying for a share of the limited amount of unprocessed timber originally from National Forest System lands in Washington State that is exempt from the prohibition against indirect substitution. This rule has been incorporated into this final rule. Contracts entered into after enactment are governed by the provisions of the interim rule and the final rule of limited scope on the effective dates of those rules.

The Department has added a sentence regarding the application of subpart F to unprocessed private timber to clarify that unprocessed private timber that requires domestic processing is subject to subpart F. Further, the Department has added a sentence to clarify that the reporting requirements for transfers of unprocessed Federal timber applies on September 8, 1995, regardless of the contract award date. This ensures that enforcement of the Act can begin immediately. Since the transfer documents are not part of the substitution regulation, this requirement is not limited by the Act's provision that the prior substitution regulation applies to contracts entered into before issuance of this final rule. In addition, the Department has made minor technical and editorial changes to this section to improve clarity and describe the status of contracts awarded between enactment of this Act and promulgation of final rules to maintain consistency throughout the rule.

Section 223.186 Definitions

The complexity of the Act requires definitions in order to explain and understand critical terms. Section 493 of the Act (16 U.S.C. 620e) defines several terms that require refinement. The following terms were defined in the interim rule, and were repeated with minor technical changes as needed, in the proposed rule for continuity, public understanding and comment: *Acquire, Act, Cants* or *Flitches, Export, Federal lands, Fiscal year, Non-manufacturer, Person, Private lands, Purchase, Substitution,* and *Unprocessed timber.* In addition, under the proposed rule definitions of the following additional terms were proposed: *Area of operations, Disregard, Each violation, Finished products, Gross value, Hammer brand, Highway yellow paint, Logs, Processed, Same geographic and economic area, Should have known, Transfer, Willful disregard,* and *Willfully.*

Nineteen responses were received concerning definitions. Ten responses addressed the definition of *Person,* focusing on the subcontractor. Other definitions addressed were: *Disregard, Each violation, Export, Finished products, Gross value, Processed, Same geographic and economic area, Transfer, Unprocessed timber* and *Willful.* Several respondents requested definitions for ''manufacturing facility'' and ''sourcing area.''

Person

Comment. Comments regarding the definition of ''person'' called for a more limited definition of ''subcontractor,'' exclusion of independent contractors as subcontractors, and inclusion of subcontractors as only those persons controlled by the purchaser, or who meet the criteria of affiliates.

Response. The Act defines ''person'' as ''any individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, or parent company, *and* business affiliates * * *'' 16 U.S.C. 620e(3) (emphasis added). If subcontractors were only to be considered in the context of affiliation, there would be no reason to include subcontractors in the definition of person.

The definition of subcontractor is ''One who has entered into a contract, express or implied, for the performance of an act with the person who has already contracted for its performance.''

Black's Law Dictionary

The extent to which a contractor and a subcontractor would be considered one ''person'' will depend on the specific facts of the arrangement between the contractor and subcontractor. The subcontractor obtains his status through his relationship with the contractor. If the subcontractor is acting independently, for instance, in violation of a provision in the Act or regulations, the subcontractor might be prosecuted as an ''individual'' or other corporate entity, not as a subcontractor.

Comment. One respondent expressed concern that a federal timber purchaser subcontracting with a contract logger who exports or who contracts to log timber that will be exported might be in violation of the Act under the definition of person. The same respondent was concerned that the contract logger who logs both federal logs and private logs eligible for export might be in violation of the Act under the definition of person.

Response. The response above outlines the purchaser's status. The status of the contract logger depends on the definition of ''acquire''. That is, if the contract logger is acquiring federal timber and exports private timber, then the contract logger would be in violation of the prohibition against substitution, assuming no exemption from the prohibition applied. The Act states that ''acquire'' means, ''to come into possession of, whether directly or indirectly, through a sale, trade, exchange, or other transaction, * * *'' 16 U.S.C. 620e(1). While the definition of acquire includes ''possession'', the definition seems to encompass only possession through different types of transactions that lead to control. The contract logger's ability to log federal timber and log exportable timber or export timber will depend on the specific circumstances by which each transaction is conducted.

After the end of the comment period for this rule, the Department received numerous letters regarding the definition of possession as used in the definition of acquire, and its effect on various business relationships, mainly service contracts. The Department may not consider these comments in this rule under the Administrative Procedure Act, 5 U.S.C. 553. However, the Department recognizes the need to clarify this issue, especially in light of the apparent change in the way business is conducted. Therefore, the Department is committed to issuing a proposed rule that will attempt to flesh out the definition of possession, and will ask for comment on a sensible way to implement the intent of the Act to prohibit substitution while balancing enforcement of the Act with reasonable restrictions on business. The Department has deleted the last sentence regarding the standards in the Small Business Administration regulation at 13 CFR 121.401 that may serve as guidelines to determining affiliation for purposes of this Act. This deletion clarifies that the Small Business Administration regulation serves as a guideline only and does not govern these rules.

Each Violation

Comment. Several respondents expressed concern that the term ''each violation'' is too inclusive to meet the intent of the Act, and that, as defined in the rule, the violation counts would be compounded or multiplied. For example, each missing log brand and paint mark would be a separate violation in addition to the violation caused by the export of the log itself. These respondents suggested that multiple violations be treated as a single event.

Response. The Department believes that the rule's use of the term ''each violation'' is consistent with the intent of Congress, and that to reduce it would weaken the intent of the Act. Congress considered each violation of the Act serious and prescribed a penalty deemed appropriate to the infraction. Nothing in the Act suggests that ''each violation'' means a series of acts, or anything other than the plain meaning of the term. Further, section 492(c) of the Act (16 U.S.C. 620d(c)) provides the Secretary with discretion in assessing civil penalties. Therefore, this suggestion is not adopted.

Comment. One respondent commented in regard to ''each violation,'' that human errors and mistakes are inevitable, and that, at times, safety conditions make complete compliance with the branding and painting requirement very difficult. This respondent felt that some reasonable standard must be used when enforcing this requirement.

Response. The Department agrees that occasional ''human errors'' are understandable. However, purchasers are expected to emphasize the importance of complying with the Act to their employees and subcontractors and to ensure that compliance is attained.

Comment. One individual said the rule should indicate that the Secretary would use discretion and judgment in determining penalties for specific violations of the Act.

Response. Congress gave the Secretary authority in section 492(c) of the Act (16 U.S.C. 620d(c)) to impose penalties for specific violations. These penalties include ceilings but do not mandate specific amounts. Therefore discretion will be used in the imposition of the penalties.

Having considered the various comments received, the Department adopts the definitions of ''each violation'' as presented in the proposed rule.

Export

Comment. One respondent stated that the definition of when export occurs provides a possible loophole in the prohibition against substitution.

Response. The Department agrees that the definition of when export occurs could provide a loophole to the substitution restrictions. Accordingly, the Department has revised the portion of the definition that relates to the date that an export agreement is entered into.

The definition in the proposed rule states that ''(E) export occurs on the date that a person enters into an agreement to sell, trade, exchange, or otherwise convey such timber to a person for delivery to foreign country. If that date cannot be established, export occurs * * *''. This definition could permit a person to enter into long-term export agreements just before the issuance of this rule, or 24 months before acquiring Federal timber, and still be exporting, or causing to be exported, private timber while acquiring Federal timber. This activity could occur because the date of the export agreement preceded the effective date of this rule or the 24-month restriction against exporting prior to acquiring Federal timber. This kind of activity would constitute substitution.

To close this potential substitution loophole, the Department has revised the definition of when export occurs by dropping the phrase ''If this date cannot be established'' and simply listing three independent conditions which for the purposes of the Act, would establish when export occurs as follows: ''Export occurs: (1) On the date that a person enters into an agreement to sell, trade, exchange or otherwise convey such timber to a person for delivery to a foreign country; (2) when unprocessed timber is placed in an export facility in preparation (sorting, bundling, container loading etc.) for shipment outside the United States; or (3) when unprocessed timber is placed on board an ocean-going vessel, rail car, or other conveyance destined for a foreign country.''

Comment. Another respondent commented that the date on which export occurred must be established with certainty.

Response. The Department intends to ascertain as closely as possible when export occurs by thoroughly investigating all suspected or alleged export violations. The Department believes the definition of export, as revised in this final rule, meets the administrative and enforcement responsibilities required by the Act.

Comments. Several respondents stated that the definition of ''export'' fails to clarify which contracts fall within its definition.

Response. The purpose of a definition is to clarify and provide a consistent meaning of a term wherever it is used in the regulation. See § 223.185, Scope and Applicability, regarding which contracts are governed by this rule.

Comment. One respondent stated that the definition of export in the proposed rule needs clarification because by ''transporting * * * through another party'', a person cannot prevent the other party from exporting the timber.

Response. If a person notifies the recipient of the timber of the need for domestic processing, pursuant to the rule's requirements at 36 CFR 223.193 and 223.194, the person would not be entering into an agreement to export, nor would the person be responsible for export that is conducted by a subsequent party.

Finished Products, Processed and Unprocessed Timber

Comment. Several respondents commented that the definitions of ''finished products'' and ''unprocessed timber'' are ambiguous. As an example, they point to § 223.187, where certain products which are not in finished product form are excluded from the definition of unprocessed timber.

Response. The Department believes that the term ''finished products'' is clear. The term is used in reference to ''finished products'' made of western red cedar that are exempt from the prohibition against indirect substitution (16 U.S.C. 620b(b)(1)). The term ''finished products'' in the Act suggests more than simply products processed to specific standards, since these products could be remanufactured; the term suggests that the products must be intended for end product use.

The Department agrees that clarification regarding ''unprocessed timber'' is necessary to prevent products produced within the sale area that could be either finished products or unprocessed timber, such as poles, posts, piling, pulpwood bolts, pulp logs and cull logs, from being removed from the sale area or transferred without reporting or identification, and later exported as unprocessed timber. While the Act lists some of the products that may fall into this category in section 493(7)(B) (16 U.S.C. 620e(7)(B)), other products, such as house logs that are part of a structure kit may be indistinguishable from unprocessed timber. Accordingly, the definition of ''unprocessed timber'' has been expanded in the final rule to add ''* * * For the purposes of reporting and identifying under §§ 223.193, 223.194 and 223.195, unprocessed timber also means timber products listed in § 223.187 of these regulations, and other timber products, including house logs, that are indistinguishable from other unprocessed timber.'' The Department also added a statement to the definition that ''unprocessed timber does not include products intended for remanufacture that meet the criteria listed in § 223.187(a) (2) or (3).'' This clarifies that the Act defines certain products as not unprocessed, or processed, that are intended for remanufacture.

The Department has also concluded that the definition of the term ''processed'' should be revised to remove the reference to ''not unprocessed'' because this terminology is not used in the rule. Further, § 223.187(b) of these regulations must be included in the reference to § 223.187, since paragraph (b) states what is *not* unprocessed western red cedar. Therefore, the definition has been revised to read as follows: ''*Processed* means timber processed into products listed in § 223.187 of these regulations.''

Comment. In commenting on these definitions, two respondents expressed uncertainty as to whether each piece in an entire order must satisfy the lumber grade requirements specified in the Act for determining whether timber is processed to standards and specifications suitable for end product use.

Response. Congress specified in section 493(7)(B) (16 U.S.C. 620e(7)(B) that products meeting the current standards of the American Lumber Standards Grades or Pacific Lumber Inspection Bureau's Export R or N list clear grades are not ''unprocessed.'' The standards that the two bureaus use are defined in the *Export R List Grading and Dressing Rules* book, published by the Pacific Lumber Inspection Bureau (1971) and adopted by the West Coast Lumberman's Association and the British Columbia Lumber Manufacturers Association, which reads, ''* * * a variation not to exceed 10 percent, more or less, of the quantity ordered shall be allowed in filling cargoes and/or parcel lots.'' (p. 4) Thus, there is no requirement that each piece in the entire order satisfy the grade requirements. However, in any given lot, at least 90 percent of the pieces must meet these grade requirements.

Gross Value

Comment. One respondent stated that gross value should not include the cost of ocean freight or insurance when sales are made on a ''C&F'' or ''CIF'' basis. The respondent stated that including these costs could cause customers to obtain these services abroad.

Response. The Act uses the term, ''gross value'' in the civil penalties section, where the Secretary may assess a $500,000 penalty or ''three times the gross value of the unprocessed timber involved'' for a violation of the prohibition against exporting Federal timber. The proposed rule defined gross value as the total amount that the person received from the export purchaser for the unprocessed Federal timber involved in the violation, before production, delivery, agent fees, overhead, and other costs are removed. The marketplace decides the total amount received and the Department does not intend to look behind this figure at the specifics of the business agreement. The Department has clarified in this rule that the gross value is the value of the timber when it is transferred. Other than this change, no change in the rule has been made in response to this comment.

Manufacturing Facility

Comment. Several respondents suggested that a definition be included in the final rule defining the meaning of ''manufacturing facility.'' One respondent stated that the term ''non-manufacturer'' needs clarification, because of the ambiguity of the term ''manufacturing facility.'' This respondent suggested that non-manufacturer be defined as it is in the SBA program. Another respondent objected to the inability of non-manufacturers to obtain sourcing areas. It was also suggested that ''manufacturing facility'' be limited to a permanently located operation designed and used to convert logs into primary wood products, including lumber and veneer products, and that it should not include secondary wood processing plants, chip, or fiber operations.

Response. The Department agrees that the term ''manufacturing facility'' needs to be defined, and that a manufacturing facility should be defined in terms of its permanent location. The Act implies a

permanent location for manufacturing facilities, in section 490(c)(3) (16 U.S.C. 620b(c)(3)); the Act requires the sourcing area to be the area sourced by the applicant's ''timber manufacturing facilities.'' The Act's intent to define a sourcing area by a permanent manufacturing facility is the reason that non-manufacturers may not apply for sourcing areas.

However, the Department disagrees that the definition should exclude producers of chips or fiber products. Sourcing areas are where the applicant desires to ''process'' timber (16 U.S.C. 620b(c)(3)). In 16 U.S.C. 620e(7)(B)(ix), the Act defines timber not included as unprocessed, that is, processed timber, to include pulp or logs *processed* for conversion into chips. Since this type of facility is specifically included as a processing facility, it is also included in the definition of ''manufacturing facility.''

Therefore, the Department has added the following to § 223.186: ''*Manufacturing facility* means a permanently located processing plant, used to convert unprocessed timber into products.'' The Department believes this addresses the ambiguity in the term ''non-manufacturer'' without adopting SBA rules.

Same Geographic and Economic Area

Comment. One respondent stated that there is no reference to ''same geographic and economic area'' with regard to sourcing areas, as the proposed definition seems to indicate.

Response. While there is no specific reference to ''same geographic and economic area'' in the sourcing area provision of the Act, this concept is used in determining sourcing areas; the term reflects the Act's requirement that sourcing areas be ''geographically and economically separate'' from areas where a person harvests private timber for exporting. An area that is geographically and economically separate from an exporting area cannot also be the same geographic and economic area from which a person exports. No change is needed in the rule.

Comment. Several respondents called for a revised definition of ''same geographic and economic area.'' The respondents felt that the definition is too broad and suggested narrowing the definition to meet the Act's intent regarding substitution. Another respondent stated that the Act has a provision that prohibits the purchase of unprocessed federal timber and the export of unprocessed private timber within the past 24 months (16 U.S.C. 620b(a)(1)(B)). The respondent said this provision addresses the concern in the proposed rule that if substitution generally were defined pursuant to the sourcing area concept of geographically and economically separate areas, persons would be granted *de facto* sourcing areas. This commenter also said that the two different definitions of ''same economic and geographic area'' hinge on a definition of ''private lands'' as west of the 100th meridian in the contiguous 48 states, and that the Act does not so limit the definition of private lands.

Response. The Department agrees with the last commenter that the Act provides a prohibition that addresses the concern about *de facto* sourcing areas, and that, accordingly, as the other respondents suggested, there is no need to have the second, broader definition of ''same economic and geographic area.'' The Act states, in the section concerning direct substitution, that, ''except as provided in subsection (c) of this section (sourcing area approval process),'' a person may not purchase unprocessed federal timber originating from west of the 100th meridian in the contiguous 48 States if, ''(A) such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands; *or* (B) such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands.'' 16 U.S.C. 620b(a)(1) (emphasis added).

The prohibition in subsection (A) is further defined in the Act. Section 620(e)(8) states that, ''*[t]he acquisition of unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States to be used in 'substitution' for exported unprocessed timber originating from private lands* means acquiring unprocessed timber from such Federal lands and engaging in exporting, or selling for export, unprocessed timber originating from private lands within the same geographic and economic area.'' (emphasis added) The underlined portion of the definition is virtually identical to the prohibition in section 620b(1)(A). The prohibition in subsection (B) is much broader, and, by its own terms, prohibits the purchase of federal timber and the export of private timber in the past 24 months, without reference to the same geographic and economic area.

The Act provides that an approved sourcing area is an exemption from the prohibitions in subsection (a) of 16 U.S.C. 620b, in addition to those prohibitions as they relate to indirect substitution in subsection (b). The section concerning sourcing areas states that, ''*[t]he prohibitions contained in subsections (a) and (b)* of this section shall not apply with respect to the acquisition of unprocessed timber originating from Federal lands within a sourcing area west of the 100th meridian in the contiguous 48 states approved by the Secretary * * *'' 16 U.S.C. 620b (emphasis added). In terms of the prohibition in section 620b(a)(1)(*A*), an approved sourcing area is the only structure provided by the Act to show that purchasing unprocessed federal timber and exporting unprocessed private timber is not occurring within the same economic and geographic area. (For example, a person who had not exported within the past 24 months, but began exporting after purchase of the unprocessed federal timber, would need a sourcing area within which to purchase the federal timber in order to demonstrate that the export and federal purchase areas were geographically and economically separate.) In terms of the prohibition in section 620b(a)(1)(*B*), a sourcing area is required if a person who had exported within the past 24 months in the west wanted to purchase unprocessed federal timber. Because of the specific statutory provision prohibiting the purchase of unprocessed federal timber and the export of private timber without limitation to the ''same geographic and economic area,'' the Department agrees that there is no need for the second, broader definition of that term, and has deleted that definition from the rule.

The Department does not agree that the term ''private lands'' should not be limited to west of the 100th meridian in the contiguous 48 states. While the Act does not specifically define ''private lands'' as being west of the 100th meridian in the contiguous 48 States, the Act must be implemented in a manner that gives meaning to all of the provisions of the Act. The Act concerns transactions west of the 100th meridian in the contiguous 48 States. To interpret private lands without such a limitation would mean that export in the previous 24 months from anywhere in the United States (and possibly even export from private lands in a foreign country) would disqualify a person from purchasing unprocessed federal timber, pursuant to 16 U.S.C. 620b(a)(1)(B). There is nothing in the Act to suggest such a broad prohibition. No change in the rule is necessary in response to this comment.

Sourcing Area

Comment. Several respondents suggested that a definition of ''sourcing area'' be included in the rules.

Response. The Department concurs that a definition of ''sourcing area'' is desirable. The definition includes the requirement that the sourcing area be economically and geographically separate from any geographic area from which the persons harvests private timber for export, pursuant to the requirement in the Act. 16 U.S.C. 620b(c)(3). Further, the interim rule required sourcing area applicants to include in the map of the sourcing area boundary both Federal and private lands that source the mill that was the subject of the initial applications. The Department has adopted this requirement in the definition of sourcing area. The Act requires the Secretary to consider the ''timber purchasing patterns, on private and Federal lands'' in the determination of the sourcing area boundary (16 U.S.C. 620b(c)(3)). If private lands were not included in the sourcing area boundary, the Secretary could not establish that the sourcing area is geographically and economically separate from the area where the sourcing area holder or applicant harvests private timber for export as required by the Act. Otherwise, private lands sourcing the mill could be the same lands from which the sourcing area holder or applicant harvests timber for export. The definition of sourcing area is as follows: ''*Sourcing area* means the geographic area approved by the Secretary which includes a person's timber manufacturing facility and the private and Federal lands from which the person acquires or intends to acquire unprocessed timber to supply such facility; a sourcing area must be geographically and economically separate from any geographic area from which that person harvests for export any unprocessed timber originating from private lands.''

Substitution

The proposed rule included the definition of substitution found in section 493(8) of the Act (16 U.S.C. 620e(8)). However, analysis of the comments and preparation of the final rule, specifically, the comments on the definition of ''same geographic and economic area'' discussed in the preamble, revealed that this definition applies only to one of the substitution prohibitions in the Act. Under the section entitled, ''Limitations on the substitution of unprocessed Federal timber for unprocessed timber exported from private lands (a) Direct substitution'' the Act lists two prohibitions. The section states that, except as provided in subsection (c), the sourcing area approval process, no person may purchase directly from the United States unprocessed timber originating from federal lands west of the 100th meridian in the contiguous 48 States if, ''(A) such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands; or (B) such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands.''

16 U.S.C. 620e(8) further defines the prohibition in § 620b(1)(A). The definition does not state, ''Substitution means * * *,'' but rather, uses a phrase virtually identical to the prohibition in section 620b(1)(A), and states what that phrase means: ''*The acquisition of unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States to be used in 'substitution' for exported unprocessed timber originating from private lands* means acquiring unprocessed timber from such Federal lands and engaging in exporting, or selling for export, unprocessed timber originating from private lands within the same geographic and economic area.'' (Emphasis added)

A need to modify the definition of substitution to fully reflect all of the substitution prohibitions in 16 U.S.C. 620b was recognized. Therefore, the definition of substitution has been modified as follows.

First, the definition of substitution has been modified to include both prohibitions found in section 620b(a), as further defined in section 620e(8). That is, a person violates the prohibition against substitution if such person acquires, directly or indirectly, unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States and engages in exporting or selling for export, unprocessed timber originating from private lands within the same geographic and economic area, pursuant to section 620b(a)(1) (A), as further clarified in section 620e(8), or such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands, pursuant to section 620b(a)(1)(B).

Second, the definition of substitution has been modified to close a loophole, in order to heed the Act's intent regarding the substitution prohibitions. The proposed rule's list of prohibitions did not limit when the purchase of unprocessed Federal timber could occur if there is subsequent exporting, unlike the 24-month limit on exporting that precedes the purchase of unprocessed Federal timber. The prohibitions did not prevent unprocessed Federal timber purchased before the export of unprocessed private timber from being substituted for the unprocessed private timber. To comply with the Act's prohibitions, a person will be committing a violation if the person engages in export, or selling for export, unprocessed timber originating from private lands during any calendar year within the same geographic and economic area that a person has unprocessed Federal timber in the person's possession or under contract. Calendar year has been adopted as the appropriate time period because it provides a consistent time period and is familiar to many purchasers who have operated under the prior substitution regulations.

Third, for clarity, the definition of substitution has been modified to include one of the prohibitions against substitution included in the proposed rule in § 233.189. Substitution occurs when a person purchases unprocessed Federal timber and sells unprocessed private timber that requires domestic processing to a third party if the third party or successive parties export the private timber. The third party or successive parties may not export such timber. The prohibition has been modified to clarify that the private timber that may be subject to a substitution violation is that timber that requires domestic processing. In this way, the private timber that may be subject to a substitution violation is identified.

In summary, the modified definition of substitution is as follows: ''*Substitution*'' occurs when: (1) A person acquires, directly or indirectly, unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States and engages in exporting or selling for export, unprocessed timber originating from private lands within the same geographic and economic area; or (2) a person acquires, directly or indirectly, unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States and, during the preceding 24-month period, exported unprocessed timber originating from private lands; or (3) a person exports or sells for export, unprocessed timber originating from private lands within the same geographic and economic area in the same calendar year that the person has unprocessed timber originating from Federal lands in the person's possession or under contract; or (4) a person purchases, directly or indirectly, unprocessed timber originating from Federal lands if such person sells or otherwise transfers unprocessed timber that originates from private lands west of the 100th meridian

in the contiguous 48 States and that requires domestic processing, to a third party if that third party or successive parties export that unprocessed private timber. A third party or successive parties who acquire such unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing may not export such timber.

Transfer

Comment. One respondent was unsure whether ''transfer'' was limited to transfer of ownership.

Response. The definition of ''transfer'' means to pass title ''or otherwise convey''; it is not limited to the transfer of ownership. No change in the definition is necessary.

Willfully, Willful Disregard, and Disregard

Comment. Several respondents criticized the definitions of *willful* and *willfully disregard* for not including the requirement that the person intended to violate the Act or its implementing regulations. One respondent stated that, while the rule defines the terms as requiring the general intent of intentionally violating an act that is prohibited, the Act requires that these terms include the specific intent of violating the Act.

Response. The Department does not agree with these comments. Defining ''willfully'' or ''willful disregard'' as a specific intent to violate a statute or regulations is a standard used in criminal law. The definition of ''willfully'' or ''willful disregard'' in the context of civil penalties is a less stringent standard. *See, e.g., Brock* v. *Morello Brothers Construction, Inc.,* 809 F.2d 161, 164 (1st Cir. 1987). However, the Department is modifying the definitions of ''willfully'' and ''willful disregard'' to follow more closely the Supreme Court's decision in *McLaughlin* v. *Richland Shoe Co.,* 486 U.S. 128 (1988). In that case, the statute of limitations for a willful violation of the Fair Labor Standards Act (FLSA) extended the statute of limitations from two to three years. The Court stated that a party had committed a willful violation if the party knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute. *McLaughlin,* 486 U.S. at 133, *citing Transworld Airlines, Inc.* v. *Thurston, et al.,* 469 U.S. 111 (1984). The party need not know that the conduct is unlawful, but must at least show indifference to the rules. *Brock,* 809 F.2d at 164, *citing Thurston.* The Supreme Court in *McLaughlin* favored this stricter standard over a less stringent standard followed in some of the case law, given the distinction in the FLSA between the statute of limitations for ''ordinary'' violations and that for willful violations. *McLaughlin,* 486 U.S. at 132.

Likewise, in the Act, there is an appreciable difference in the amount of penalty that may be assessed for a willful violation, or a violation committed with willful disregard ($500,000), and violations committed either in disregard or by a person who ''should have known'' ($75,000 and $50,000, respectively). Therefore, the Department has changed the definition of willfully and willful disregard to mean committing an action that a person knew or showed reckless disregard for the matter of whether the person's conduct was a violation of the Act (or its implementing regulations, in the case of ''willfully'').

Comment. One respondent stated that the definition of disregard is too broad, and should also include specific intent.

Response. The rule's definition of disregard is taken from *Black's Law Dictionary,* 5th Ed.: ''to ignore, overlook, or fail to observe'' any provision of the Act. Intent is not a prerequisite to committing a violation ''in disregard'' of the Act or its implementing regulations. Such a definition would render the definition of willfully and willful disregard meaningless. No change has been made in the rules in response to this comment.

The standards of ''disregard'' and ''should have known'' are similar to the degrees of negligence. That is, they differ in the ''degree of inattention'' with which the actor commits an act. ''Disregard'', is more than ''simple inadvertence.'' The Department believes that the civil penalties may be understood more clearly if they are presented together. Therefore, the Department has placed all of the standards for civil penalties under the heading, ''Civil penalties.''

In addition to the aforementioned changes, the Department has made minor technical and editorial changes to other definitions within this section to improve clarity; these changes have no substantive effect.

Section 223.187 Determination of Unprocessed Timber

The definition of unprocessed timber in the Act refers to minimum standards and grades of lumber. In order to determine that these standards have been met, the Department proposed in § 223.187 that the shipper of record possess a legible copy of a lumber inspection certificate issued by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard. This certificate would be in the shipper's possession for each shipment and be available for inspection upon request of the Forest Service.

Comment. Several persons objected to the requirement that products be ''manufactured for a specific order,'' stating that commonly ordered products generally are produced without specific orders and stored in inventory. This practice ensures that production need not be curtailed during slow periods and that companies can respond quickly to subsequent orders for products.

Response. The Department concurs with these respondents that § 223.187(a)(1)(ii) needed revision for clarity. It is important for enforcement of the Act, not that products in a shipment have been manufactured for a specific order, but that the products are only intended to be used in the form shipped, and not to be remanufactured into other products in the foreign country. Therefore, in response to this comment, § 223.187(a)(1)(ii) in the final rule has been revised to require that the shipper of record have available for Forest Service inspection a certificate certifying to the intended use of the shipment or order. Likewise, a certification requirement has been added for pulpwood bolts, pursuant to § 223.187(a)(8), to insure that the intent of processing the bolts into pulp is met. These certifications are not required if the timber obtained may be exported (for instance, because the timber originates from private lands from which the timber may be exported) without regard to intended use of the shipment or order. This has been clarified in § 223.187(a)(1).

For ease of administration, the specific certification language has been provided in § 223.187(b) (2) and (3). The person signing the certificate certifies the shipping order number, the date of that order and the intent that the material will be used as shipped or processed into pulp and will not be manufactured into other products. The certifier also certifies that the certification is made with full knowledge of the Act and its implementing regulations. Further, the certifier certifies that exporting unprocessed timber originating from Federal lands or exporting unprocessed timber from private lands that is required to be processed domestically is a violation of the Act and its implementing regulations, and that signing the certificate without abiding by its contents is a violation of the False Statements Act. Regarding a

corporation, only a person authorized in writing by the Chief Executive Officer to sign certificates pursuant to 36 CFR 223.187(a)(1)(ii) may sign such certificates. The Forest Service must receive the original, written authorization from the Chief Executive Officer, pursuant to 36 CFR 223.187(b)(5), before a person is authorized to sign the certificates.

Comment. Three respondents suggested that instead of requiring that the shipper of record have in its possession a certificate issued by a lumber inspection/grading bureau, the provisions of the Act related to processed products could be met simply by either requiring the shipper of record to have the certificate available for inspection, or declaring that the products in a particular shipment were inspected, graded, and found to meet the requirements of processed products under the Act, or requiring the shipper of record to certify that ''The material in this shipment is conveyed pursuant to the attached order and is not intended for remanufacture.''

Response. The Department is requiring that the shipper of record have the certificate issued by the lumber inspection/grading bureau in his/her possession, available for inspection, i.e., readily available, not that the shipper of record necessarily have the certificate on his/her person. Regarding the declaration and the certificate, the Department agrees that these are necessary to ensure that the shipper of record understands that the shipment is not intended for remanufacture. The proposed rule required such a certificate in § 223.187(a)(1)(ii). In order to clarify this requirement, the final rule has amended this section to include the specific certification language that should be used. This certification does not substitute for the lumber inspection certificate. This certificate assures the Department, by the persons responsible for lumber inspection and grading, that the lumber meets the grading requirements of the Act at 16 U.S.C. 620e(7)(B).

Comment. One person stated that requiring separate (lumber grade) inspections of each shipment would deter processed product exports, contrary to the intention of Congress. The respondent also stated that products scheduled for one shipment that are delayed or diverted to another should not require a second certificate.

Response. The Department disagrees with this comment. Certified lumber inspection certificates are a common component of shipment documentation and, therefore, pose no deterrence to lumber exports. The Department accepts the certificate for compliance and enforcement purposes in lieu of breaking apart bundles of lumber prepared for export and individually grading each lumber piece, which certainly would deter exports.

Further, a lumber inspection certificate is required for each shipment or order, regardless of how the material in the shipment came to that shipment. This requirement is necessary for effective inspection of various shipments.

Comment. Several respondents stated that § 223.187 should make clear that restrictions and documentation apply only to material to be exported, not to products sold for domestic consumption, regardless of the degree of manufacture.

Response. The Department agrees with this comment. The Act does not place restrictions on products intended to be sold or manufactured domestically. The Department believes that the rule clearly states that the requirements in § 223.187 apply to material to be exported. Therefore no revisions are necessary in response to this comment. It should be noted, however, that the definition of unprocessed timber includes the items listed in § 223.187 that are indistinguishable from unprocessed timber for purposes of the record keeping and marking requirements in §§ 223.193–.195.

Comment. Several respondents expressed concern that lumber that does not meet the clear grade standard will cause them significant practical problems, particularly for products up to 12 inches thick which were manufactured as exportable clear grades but, upon inspection, failed to meet the standard. These respondents felt the rule would force them to remanufacture such lumber into exportable products up to 8¾ inches thick, or into other products.

Response. Congress included in the Act language permitting the export of clear grade timbers (cants or flitches) up to 12 inches thick and cants of a lesser grade up to 8¾ inches thick intended for remanufacture. Export R List Grading and Dressing Rules permit up to 10 percent of the pieces in a given lot to be outside the specified lumber grade for the lot. Therefore a lot of clear grade 12 inch cants may contain individual cants that do not meet this grade and still qualify for export, provided the lesser grade cants do not make up more than 10 percent of the total lot. If a given lot of 12 inch cants is outside this accepted grading tolerance level, the exporter will have to remove the below grade cants from the lot and re-saw them to not more than 8¾ inches in thickness before exporting or be in violation of the Act. Accordingly, no change in the rule as proposed is necessary.

Comment. Several respondents stated that the final regulations should allow export of clear lumber meeting the referenced grades in thicknesses up to and including 12 inches nominal. These respondents stated that a nominal 12 inches would permit cants cut from fresh cut green trees to be sawn slightly thicker than a true 12 inches to allow for shrinkage back to 12 inches as the wood dries.

Response. The Department declines to adopt this comment. The Act states specifically the maximum thickness of a cant meeting clear grade specification permitted to be exported without further processing is 12 inches (16 U.S.C. 620e(7)(ii)).

Comment. One respondent commented that a producer should be permitted to seek export customers who can use mismanufactured products as is, without further manufacture.

Response. Section 493(7)(B) of the Act (16 U.S.C. 620e(7)(B)) states explicitly the lumber grades and maximum timber sizes that may be exported for further manufacturing outside the United States. In accordance with the Act, products needing further processing before use must meet these grades and size restrictions before being exported. No change in the final rule is made in response to this comment.

Comment. Two respondents stated that the rule also should expressly permit the chipping of any Federal log or portion of a Federal log at domestic operations and that any log which is used solely for domestic chipping be considered a pulp or cull log even if it meets technical specifications for some other grade. Another respondent suggested that a load of logs consisting mainly of chip logs with some higher-grade logs mixed in should be classified as chip logs, even if all or some of the higher-grade logs are processed into some other product. This would prevent waste and encourage the most efficient use of these Federal logs.

Response. The rule does not preclude the chipping of any log obtained from Federal lands. However, the Act at 16 U.S.C. 620e(7)(B)(ix), exempts only pulp and cull logs from the meaning of the term ''unprocessed timber,'' with regard to logs that are processed at domestic pulp mills, domestic chip plants or other domestic operations for the purpose of conversion of the log into chips. Congress did not state that any log converted into chips is exempted from the restrictions on unprocessed

timber. Rather, Congress specifically excepted *pulp and cull logs* if they are processed into chips.

To assure that pulp and cull logs that may be indistinguishable from unprocessed timber are not subsequently exported, they must be identified, pursuant to the revised definition of unprocessed timber in 36 CFR 223.186 of this rule.

Determination of Unprocessed Western Red Cedar

Since publishing the proposed rule, the Bureau of Export Administration, Department of Commerce, published a proposed rule on June 3, 1991 (56 FR 25054), and a final rule on January 6, 1993 (58 FR 487), amending the Export Administration Regulation at 15 CFR 777.7, governing the export of unprocessed western red cedar. The Department of Commerce's final rule revises the definition of processed western red cedar to exclude any individual piece of western red cedar having a cross section that exceeds 2,000 square centimeters (310 square inches), regardless of grade. This change makes the United States' western red cedar export restrictions consistent with those of the Providence of British Columbia, Canada. Section 223.187(c) of this rule has been revised to conform with the change in the Department of Commerce's rule governing export of western red cedar.

Comment. One respondent mentioned the proposed rule published by the U.S. Department of Commerce and urged that the U.S. and Canadian Governments develop a standard definition for all species of unprocessed timber.

Response. Section 491(d)(5) of the Act (16 U.S.C. 620c(d)(5)), which imposes restrictions on exports of unprocessed timber originating from State or other public lands, states ''nothing in this section shall be construed to supersede the provisions of section 7(i) of the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)).'' In order to provide a consistent definition of western red cedar for Federal as well as State and other public lands, and to provide for consistent exporting procedures, § 223.187 of the proposed rule included the definition of western red cedar taken from the timber export regulations established by the Secretary of Commerce at 15 CFR 777.7, which implement section 7(i) of the Export Administration Act, as amended. Discussions on standard definitions of unprocessed timber for species other than western red cedar have not been undertaken as of this date. However, the Act specifically defines unprocessed timber in section 493(7)(A) and (B), and is sufficient for the purposes of this rule making.

In order to monitor any indirect substitution violations, the Department has added a certificate to a new paragraph (d) similar to the certificate for § 223.187(b) with regard to the intent of the shipper of record. The certificate requires the shipper of record to identify whether the product is intended for end product use, and to acknowledge that only processed western red cedar that is intended for end product use is exempt from the prohibition against indirect substitution. Western red cedar products that are ''processed'' may be exported, but they are not excluded from the prohibition against indirect substitution unless they are intended for end product use. Without this certificate, the Department has no way of enforcing the exemption from indirect substitution allowed for ''finished products'' of western red cedar, because the Department could not determine by inspection whether a product is intended for end product use. The certificate reads as follows: ''I certify that the products in the shipment identified by my shipping order number _____, dated _____, are manufactured in accordance with the attached order from _____ (buyer) _____ of _____ (address) _____, numbered _____ and dated _____, are / are not intended for end product use. I understand that only western red cedar products that are *finished products* are exempt from the prohibition against indirect substitution in the Forest Resources Conservation and Shortgage Relief Act of 1990 (16 U.S.C. 620b(b)(1)) and its implementing regulations. I make this certification with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations. I fully acknowledge and understand that to require western red cedar under the indirect substitution exemption in section 490(b)(1) of the Act (16 U.S.C. 620b(b)(1)) for purposes other than domestic processing into finished products will be a violation of this Act, its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies for such violation.'' The signatory process and Chief Executive Officer authorization of the signatory is the same as for the certificate in § 223.187(b).

Otherwise, the Department has made several changes to the text as proposed for technical and editorial clarity, but such changes have no substantive effect.

Section 223.188 Prohibitions Against Exporting Federal Timber

This section of the proposed rule was identical to that in the interim rule. Section 489 of the Act (16 U.S.C. 620a) continues the prohibition against the export of timber from Federal lands west of the 100th meridian in the contiguous 48 States that has been renewed annually through the Appropriations Act for Interior and Related Agencies.

Comment. Only one comment was received on this section. The respondent stated that ''Our company opposes export of logs regardless of origin.''

Response. The Act does not prohibit exporting of logs from private lands as long as logs from Federal lands are not substituted for those exported private logs in the domestic market. The Department has no authority to restrict private log exporting allowed by the Act; therefore, this section of the final rule is unchanged.

Section 223.189 Prohibitions Against Substitution

This section of the proposed rule also was almost identical to that in the interim rule; the proposed rule added a paragraph (a)(3) to § 223.189. This section was repeated in the proposed rule to provide readers with a comprehensive review of the Act's implementing regulations and to provide for public comment on the interim rule. Several changes have been made to clarify this section.

Section 490 of the Act (16 U.S.C. 620b) limits direct and indirect substitution of unprocessed Federal timber for unprocessed timber exported from private lands. Section 490(a) of the Act (16 U.S.C. 620b) entitled ''*Direct Substitution*'') states that no person may purchase directly from any Department or agency of the United States unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if:

(A) Such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands; or

(B) Such person has exported unprocessed timber originating from private lands during the preceding 24-month period.

Proposed § 223.189(a)(3) stated that no person may acquire unprocessed timber from Federal lands if the person transfers unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States to a third person, and that third party or successive parties export that unprocessed private timber. The third

party or successive parties who acquire such unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 states may not export such timber.

Proposed paragraph (a)(3) would reduce the potential for violations of the substitution prohibition. The potential is particularly high in multiple transfers of unprocessed timber originating from private lands in which any of the parties acquire or wish to acquire Federal timber. The paragraph would protect the person who acquires unprocessed Federal timber and transfers unprocessed private timber from a possible substitution violation by making it unlawful for the person acquiring the private timber to export it.

The Act exempts from these prohibitions persons with historic export quotas. The 24-month restriction is waived by a certification process described in § 490 of the Act, and § 223.189 (c) and (d) of the proposed rule.

Nineteen public comments were received on this section.

Comment. Several respondents said that the certification language should indicate that the individual signing the certification on behalf of a corporation is doing so in his or her capacity as an officer or agent of that corporation, not in a personal capacity.

Several respondents also commented that a corporation's Chief Executive Officer should not necessarily be required to sign the certification, since the Chief Executive Officer may have limited knowledge of the firm's acquisition and disposition of unprocessed timber. These respondents suggested that a designated officer or agent of the corporation be permitted to sign the certification on behalf of the corporation.

Response. The certification language holds the corporate officer signing the certification liable in a corporate capacity, not a personal capacity. The certificate must be signed by someone with authority to bind the corporation. The Department prefers to have the signature of the official with clear authority to bind the corporation, the Chief Executive Officer: it would be difficult for the Department to determine if officers, other than the Chief Executive Officer, could bind the corporation. This requirement is similar to the requirement in 36 CFR 223.171(b)(6)(1992), issued pursuant to the Federal Timber Contract Payment Modification Act (16 U.S.C. 618), with which participating timber purchasers complied. In that regulation, the Chief Executive Officer is required to sign a statement for a corporation certifying the accuracy of information submitted. The Chief Executive Officer need not have personal knowledge of the information which he or she is certifying, but must ascertain that the information is true, complete, and accurate to the best of his or her knowledge and belief.

Comment. One respondent wrote that certifications should not be binding if a person or corporation later decides to stop buying Federal timber.

Response. The Department declines to adopt this proposal. As discussed earlier, the final rule adopts and amended the definition of ''substitution'', which states that substitution occurs when a person exports during any calendar year in which the person has Federal timber in the person's possession or under contract within the same geographic and economic area.

Comment. One respondent objected to implementation of the interim rule before the public had a chance to comment on it.

Response. The Department would have preferred prior notice and comment; however, for the reasons set forth in the preamble to the interim rule, immediate implementation was necessary. Comment on the interim rule was provided for in the proposed rule. These comments have been analyzed in this rule.

Comment. Three respondents asked that provisions for requesting waivers of 24-month prohibition against purchasing Federal timber following export of private timber indicate when and under what circumstances waivers will be granted.

Response. The waiver of the 24-month prohibition was available only to applicants applying by December 20, 1990. Acceptance or rejection of waivers depended upon the Administrative Law Judge's ruling on sourcing area applications. That ruling has occurred, and applicants have been notified of those decisions. In addition, the Forest Service has sent letters advising each applicant of the status of its sourcing area application and request for waiver. Therefore, no change in the rule is necessary. Persons whose waivers were disapproved are not bound by the request for the waiver (36 CFR 223.189(g)(2)).

Comment. One person commented that the rule should clarify that persons signing the waiver of the 24-month prohibition, which requires export to cease for three years, may not export within the sourcing area for as long as the sourcing area is approved.

Response. The Department agrees with this comment. Therefore, in response to this comment, the Department has added a sentence to proposed paragraph (f), now paragraph (5) of § 223.189(f), stating that persons signing the waiver, like all sourcing area holders, may not export unprocessed private timber originating from within the sourcing area.

Comment. Several respondents asked for clarification regarding whether a person who may not purchase unprocessed Federal timber may purchase unprocessed private timber from a person who may purchase unprocessed Federal timber.

Response. A person who may purchase unprocessed Federal timber may purchase unprocessed private timber from someone who may purchase unprocessed Federal timber, provided that the person purchasing the unprocessed private timber does not export the private timber if the timber must be domestically processed (e.g., if the private timber originates from within a sourcing area).

Proposed paragraph (a)(3) has been rewritten to clarify that a person may not purchase unprocessed Federal timber in the west if the person transfers unprocessed private timber from the west *that requires domestic processing,* to a third party, if that party or successive parties exports the unprocessed private timber. The last sentence concerning the prohibition against third or successive parties exporting such timber has also been modified to state that the restriction applies to private timber that requires domestic processing. The restrictions in paragraph (a)(3) are meant only to apply to timber requiring domestic processing, to follow the intent of the Act, which provides certain exemptions allowing for the purchase of unprocessed Federal timber and the export of unprocessed private timber.

Comment. Several respondents expressed concern that they could lose their right to buy Federal timber and be in violation of the substitution prohibitions, if a party to whom they sell unprocessed Federal timber exports private timber.

Response. Section 492(a)(2) of the Act (16 U.S.C. 620d(a)(2)) states that a person who transfers unprocessed Federal timber will provide to the person acquiring such timber a written notice regarding the Federal origin of the timber, and receive from such party written acknowledgment of the notice and an agreement to comply with the requirements of the Act. 36 CFR 223.193(b) implements section 492(a)(2) of the Act (16 U.S.C. 620d(a)(2)), and provides procedures to follow when timber from Federal lands is transferred

to another person. To implement this provision, the Department has developed forms intended to relieve the seller of liability if subsequent buyers violate the export or substitution restrictions of the Act. A seller or buyer who cannot produce the appropriate document upon request could be found in violation of the Act. Accordingly, no change in the rule is necessary to respond to the concern.

Comment. One respondent expressed concern that the rule makes the Federal purchaser who sells private timber responsible for the acts of subsequent purchasers of private timber. One respondent suggested that persons with sourcing areas who sell private timber originating from the sourcing area be required to notify the buyer that such timber must be domestically processed.

Response. In order to protect Federal purchasers from the actions of subsequent private purchasers, the proposed rule included an acknowledgment of the prohibition, and an agreement to notify subsequent holders of the timber and marking requirements for unprocessed private timber. These requirements have not been changed in the final rule. 36 CFR 233.194. The Department has clarified § 223.189(a)(3) to state that a person may not purchase unprocessed Federal timber if the person exports or sells for export unprocessed private timber that requires domestic processing.

Comment. In connection with private timber monitoring, one respondent asked whether the prohibition against a Federal purchaser's selling private timber for export applies when the Federal purchaser sells ''cutting rights'' to the private timber. This respondent also asked if the prohibition applies when the Federal purchaser sells private land and timber.

Response. Since ''cutting rights'' are basically a timber sale, private timber acquired in this manner would be subject to the prohibition against substitution. If land with timber on it is sold, the purchaser would be evaluated separately from the seller, unless the purchaser and the seller are the same ''person'' under the definitions in the Act and in these regulations (for instance, if they are affiliated). However, if the land is sold, and the seller reacquires the cut over land within 24 months of the original sale, that person would be subject to the prohibition against substitution. Current definitions in the statute and the rules govern this situation. No change to the rule is necessary in response to this comment. It should be noted that the sale of land encompassing part or all of a sourcing area, and/or the sale of the sourcing area facility, being a change in circumstances, will trigger a review of the sourcing area.

Comment. Several respondents suggested that the rules exempt surplus species from substitution prohibitions.

Response. The Department agrees with this comment. While the Act specifically exempts surplus species from the prohibition against export of unprocessed Federal timber, it does not exempt surplus species from the prohibition against substitution. However, the intent of the prohibition against substitution supports the exemption of surplus species from the prohibition against substitution. The Conference Report states that, ''[t]he general reason for limiting substitution is to restrict companies from purchasing Federal timber for their mills and then exporting private timber from the same general area.'' (Conf. Rpt. at 252.) Presumably, the private timber that is exported would be processed in the mill if Federal timber could not be purchased for that purpose. A species may be declared surplus to domestic needs if there is no domestic market for the species. If there is no domestic market, there would be no manufacturing of that species in domestic mills. The purchase of the surplus species would not facilitate the purchaser's exporting of private timber by providing Federal timber for the purchaser's mill. Therefore, there is no reason to subject surplus species to the prohibition against substitution. Accordingly, a new paragraph (a)(4) of § 223.189 has been added to the final rule to exempt surplus species from the prohibition against substitution, and states: ''The prohibitions in paragraphs (a)(1)–(3) shall not apply to specific quantities of grades and species of unprocessed timber which the Secretary of Agriculture has determined to be surplus to domestic manufacturing needs.''

Paragraph (a)(1) of the proposed rule (now paragraph (a)(1)(A)) has been modified to reflect the modified definition of substitution. Paragraph (a)(2) has been added to the prohibitions against substitution to parallel when substitution occurs, pursuant to the definition in § 223.186. Paragraph (a)(2) concerns the prohibition against exporting unprocessed private timber and purchasing unprocessed Federal timber in the same geographic and economic area in the same calendar year. Explanations of these modifications may be found in the preamble discussion of the definition of substitution.

Paragraph (3) has been added to § 223.189(e) to clarify that a portion of National Forest System timber from Washington State is exempt from the prohibition against indirect substitution, pursuant to § 223.203. Section 223.189(f) has been revised by adding paragraph (4) to reflect the revised definition of substitution. The revised definition of substitution includes the export of unprocessed private timber during any calendar year that a person has unprocessed Federal timber in possession or under contract.

Having considered the comments addressing § 223.189, the Department is adopting this section as proposed with the changes to the provisions as discussed.

Section 223.190 Sourcing Area Application Procedures

Subsection 490(c) of the Act (16 U.S.C. 620b) requires the Secretary of Agriculture to prescribe procedures for applying for approval of a sourcing area. At a minimum, the procedures shall require the applicant to state the location of private lands from which, in the previous year, the applicant has harvested or otherwise acquired unprocessed timber which was exported from the United States; and the location of each timber manufacturing facility owned or operated by the applicant within the proposed sourcing area boundaries from which the applicant proposes to process timber originating from Federal lands.

The Act also requires that the Secretary provide the opportunity for a hearing on the application and that approval or disapproval be on the record.

Any sourcing area approval must be based on a determination by the Secretary that the area includes the manufacturing facilities at which the applicant expects to process the Federal timber, and that the area is geographically and economically separate from any area from which that person harvests for export any unprocessed timber originating from private lands.

The Secretary also shall consider equally the timber purchasing patterns of the applicant on private and Federal lands with those of other persons in the same local vicinity and the relative similarity of such purchasing patterns. The interim rule defined manufacturing facilities in the ''same local vicinity'' as those facilities located within 30 miles of the community where the applicant's facility is located. However, the term ''same local vicinity'' may include more distant communities if manufacturing facilities in those communities depend on the same source of timber and have similar purchasing patterns. Thus, the

relative similarity of purchasing patterns would be determined by examining the location and similarity of unprocessed timber being acquired for the affected facilities.

Nine respondents commented on this section of the rule.

Comment. Several respondents indicated that the final rule should specify who may apply for a new sourcing area or request modification of an existing sourcing area, and what time constraints might apply.

Response. The Department agrees with the suggestions to state who may apply for a sourcing area. A person who is not an exporter, or is not affiliated with a person who exports, may not apply for a sourcing area. The Act states that the Secretary may approve a sourcing area if the area where the applicant desires to purchase Federal timber is economically and geographically separate from the area from which that person ''harvests for export'' unprocessed private timber (16 U.S.C. 620b(c)(3)). The language is clearly geared towards current exporters. Further, a person who does not export does not need a sourcing area.

In contrast, person need only ''desire'' to process Federal timber in order to apply for a sourcing area (16 U.S.C. 620b(c)(3)). In fact, a person could not both be processing Federal timber outside of an approved sourcing area and exporting unprocessed private timber without violating the prohibition against substitution. The ''desire'' to process Federal timber may include the intent to acquire or become affiliated with a mill that processes Federal timber. In the case of an affiliation, the Department must have written confirmation that the sourcing area applicant intends to acquire or affiliate with a mill that processes Federal timber as soon as the sourcing area is approved. This will prevent persons from obtaining a sourcing area when one is not needed; in other words, when both processing Federal timber and exporting private timber are not occurring. In order to clarify that the ''desire'' to process Federal timber may include the intent to acquire or become affiliated with a mill that processes Federal timber, and that written proof of this intent is required when applying for a sourcing area, the Department has expanded paragraph (a) for § 223.190 of the rule as follows: ''Subject to the restrictions described in § 223.189 of this subpart and, except as provided in paragraph (b) of this section, a person who owns or operates a manufacturing facility and who exports unprocessed timber originating from private lands may apply for a sourcing area in accordance with the procedures of this section. However, an owner/operator of a manufacturing facility who exports unprocessed timber originating from private lands may not possess or acquire unprocessed timber originating from Federal lands unless the acquisition is within an approved sourcing area. A person who intends to acquire or become affiliated with a manufacturing facility that processes Federal timber and who is an exporter may apply for a sourcing area. Written proof of the intent to acquire or affiliate must be included in the sourcing area application, signed by the applicant and the person or, in the case of a corporation, the Chief Executive Officer, whose company the applicant intends to acquire or affiliate with. This certification must be on letterhead and must be notarized. A sourcing area application that the Secretary determines would be approved will be granted tentative approval pending final notification by the applicant of acquisition of or affiliation with the manufacturing facility. The tentative approval of the sourcing area will lapse unless the acquisition or affiliation occurs within 30 days of the tentative approval of the sourcing area. A sourcing area is not valid until final approval of the sourcing area.

The direct substitution prohibition did not apply to a person who applied for a sourcing area on or before December 20, 1990. A request for modification of an existing sourcing area shall trigger a review pursuant to the procedures and restrictions in § 223.191(e).''

Comment. One respondent suggested that marking a private timber source on a map was adequate. Another respondent stated that the exact location of timber sales for exported timber need not be identified.

Response. The Act requires that sourcing area applicants provide the Secretary with the ''location of private lands from which such person has harvested or otherwise acquired'' exported timber (16 U.S.C. 620b(c)(A)). While the Act does not require the identity of individual timber sales, it does require the identity of the lands where timber sales were purchased. No change in the rule is necessary.

Comment. Several respondents thought that sourcing area applicants should be required to show where private and federal timber had been acquired in the previous 24 months in order to provide information on ''timber purchasing patterns on private and federal lands of the applicant.'' The Act requires consideration of this factor in the determination of an economically and geographically separate sourcing area. One respondent thought that sourcing area applicants should be required to document that no private timber had been exported from within the area that is the subject of the application, since the Act provides for the sourcing area exemption if a person has not exported unprocessed private timber from within the sourcing area in the previous 24 months.

Response. The Department has records of timber sale purchases on Forest Service lands, so the applicant need not provide this information. An application encompassing lands administered by other federal agencies would be reviewed by those agencies. As far as information regarding private timber purchases, 16 U.S.C. 620b(c)(2)(A) of the Act and § 223.190(c)(1)(iii) of the interim rule (and this final rule) require that applicants provide information on the location of private timber purchases in the previous 12 months. The Forest Service can verify these purchases and the purchases of others in the area through Forest Service records and, in the case of private timber purchases, through state harvesting permits, severance or yield tax records, industrial safety records and by other means. The Department believes that this information is sufficient to determine whether a sourcing area is economically and geographically separate from an applicant's exporting area.

However, the Department agrees that the Act requires that persons with sourcing areas may not have exported unprocessed private timber originating from private lands within the previous 24 months. To clarify implementation of this requirement, the Department has amended the requirement in paragraph (iii) of § 223.190(c)(1) to read as follows: ''The location of private lands within and outside the desired sourcing area where the person has, within the 24 months immediately preceding the date of the application, acquired unprocessed timber originating from private land which was exported * * *.'' The Act requires sourcing area applicants to provide ''at a minimum * * * information regarding the location of private lands within the previous year'' from which the person has harvested or otherwise acquired unprocessed timber for export (16 U.S.C. 620b(c)(2)(A)). Given the Act's requirement that no export has occurred within the sourcing area in the previous 24 months, requiring information regarding private timber purchases for the previous 24 months comports with

the Act's requirements. The Act's requirement of a year's worth of information addresses the application process. Rather than obtaining additional information from the applicant during the adjudication process to determine whether exporting has occurred during the previous 24 months within the proposed sourcing area, the Department believes it is more efficient to obtain all of the information at once. This information is required for sourcing area applications submitted on or after September 8, 1995. Further, the Department has added a sentence to the certification that accompanies the sourcing area application in § 223.190(c)(4). The sentence reads as follows: ''I certify that I have not exported unprocessed timber originating from private lands within the boundaries of the sourcing area that is the subject of this application in the previous 24 months.''

Comment. One respondent suggested that a map of haul roads used for timber sourcing the manufacturing facility be included in the application, and that the rule clarify that the application be public information.

Response. The interim rule already required a map of the intended sourcing area (36 CFR 223.190(c)(1)). The Department believes that this is sufficient, along with the records of timber sale purchases, to meet the Act's requirements without requiring that haul roads be identified.

The interim rule states that applications are not confidential information (36 CFR 223.190(d)). The rule acknowledges that some information may be deemed confidential under the Freedom of Information Act. Therefore, the rule allows applicants to mark such information for consideration of confidentiality. This information should not hinder other parties in their review of sourcing area applications.

Comment. One respondent stated that overlapping sourcing areas of different applicants caused concern regarding complexity of administration.

Response. Each sourcing area application is adjudicated on its own merits. As long as each sourcing area application meets the criteria in the Act and the regulations, it will be approved. It is likely that different applicants will have valid sourcing areas that overlap. Overlapping sourcing areas will increase the complexity of administration and will require strict accountability and tracking. No change in the rule is necessary.

Comment. One respondent thought that the substantive standard for evaluation of a sourcing area should be clearly stated.

Response. The Department believes that the standard for evaluation was stated clearly in 36 CFR 223.190(h)(5) (now 36 CFR 223.190(i)) and no change is necessary.

Comment. One respondent stated that the definition of ''same local vicinity'' is too broad and does not accurately reflect the intent of Congress. Another respondent said that the final rule should specify that the applicants need only identify those competitors located within 30 miles known by the applicant to have similar sourcing patterns and products. Several respondents said that the term ''same general vicinity,'' found at 36 CFR 223.190(c)(2), should be defined. Another respondent stated that the only reason ''same local vicinity'' seems to encompass mills beyond 30 miles in the regulations is for notice and commenting purposes; if the Department wants input from a broader spectrum, it should change the notice requirements, but persons beyond the ''same local vicinity'' should not be weighted equally with those in the same local vicinity.

Response. The Act at 16 U.S.C. 620b(c)(3) requires that the Secretary consider the timber purchasing patterns of the applicant as well as other persons ''in the same local vicinity.'' In implementing this requirement, the interim rule used the guidance in the Conference Report and stated that ''same local vicinity'' is normally the manufacturing facilities located within 30 miles of the community where the applicant's manufacturing facility is located. However, this definition alone is inadequate to cover the Act's requirement to consider timber purchasing patterns, so the interim rule stated that the ''same local vicinity'' may include more distant communities if those communities are dependent on the same source of timber and have similar purchasing patterns. Applicants are required to provide this information, to the best of their knowledge, since they would be the primary source of this information.

''Same general vicinity'' was a typographical error, which has been corrected to read, ''same local vicinity.'' The notice requirement is meant to notify those persons whose purchasing patterns would be relevant to the sourcing area application. No change in the rule is necessary.

Comment. One respondent suggested that only the predominant activities of other mills should be considered in determining the ''relative similarity of purchasing patterns'' in 36 CFR 223.190(h)(5)(iii) (now 36 CFR 223.190(i)(3)). The respondent stated that one-time purchase of federal timber should not be compared to a dozen purchases by a competitor.

Response. Pursuant to the Act, the Department considers only purchasing *patterns.* An anomalous sale would not be considered a pattern. No change is necessary in the rule in response to this comment.

Further review of the sourcing area procedure has indicated that the similarity of products being produced by the applicant and other manufacturing facilities in the same local facility, as specified under paragraph (iii) of § 223.190(h)(5) of the interim rule and proposed rule (now paragraph (3) of § 223.190(i)), is not significant in determining the ''relative similarity of purchasing patterns.'' The major factor needed to determine the similarity of purchasing patterns is whether the timber that competing purchasers bid on and bought was similar. This criterion was already included in paragraph (h)(5)(iii) (now paragraph (i)(3)).

Accordingly, paragraph (i)(3) of § 223.190 in the rule has been revised to eliminate consideration of the similarity of products being produced by competing facilities in the same local vicinity as a factor to determine the similarity of purchasing patterns.

Comment. Several respondents stated that sourcing areas should be approved as requested if there is no ''credible opposition'' to the application.

Response. The Act establishes specific criteria by which the Secretary may approve an application. The Secretary may approve an application ''only if'' the Secretary determines that the requested sourcing area is economically and geographically separate from the area from which the applicant harvests private timber for export (16 U.S.C. 620b(c)(3)). Thus, regardless of the extent of opposition to an application, the Secretary must make an independent determination using the standards established by the Act.

Comment. Several respondents stated that applicants should be allowed to provide supplemental information after submission of the application if other parties raise issues or questions about the application.

Response. The Act requires the sourcing area determinations to be made ''on the record and after an opportunity for a hearing'' (16 U.S.C. 620b(c)(3)). This process, pursuant to the Administrative Procedure Act (5 U.S.C. 554), requires the Department to give parties an opportunity for submission and consideration of facts, arguments and offers of settlement when time and

the public interest allow. Applicants must submit the information required by the Act and implementing regulations in order for the application to be processed, regardless of additional information that may be supplied pursuant to the formal adjudication.

Comment. One respondent suggested that this section should state that a sourcing area applicant need not submit a sourcing area application to the Bureau of Indian Affairs, even if the Bureau's lands are part of the proposed sourcing area.

Response. In defining ''Federal lands,'' Section 493 of the Act (16 U.S.C. 620e) specifically excludes Indian and Native Corporation lands. This exclusion is repeated in § 223.186 of this rule. The Department feels these exclusions are adequate and declines to repeat these exclusions in this section of the rule.

Comment. Another respondent suggested that this section be revised to limit the persons entitled to request a hearing to the applicant and other applicants for the same competing sourcing area.

Response. The Department disagrees. Section 490(c)(3) of the Act directs the Secretary to approve or disapprove an application, ''on the record and after an opportunity for a hearing.'' Use of this specific language places the Act under the provisions of the Administrative Procedures Act, which requires public involvement in the decision-making process.

Comment. One respondent stated that section 556(d) of the Administrative Procedure Act (5 U.S.C. 551, *et seq.*), the statute governing the administrative process by which sourcing area determinations are made, does not require a full, evidentiary hearing, but allows for a hearing based in part or in full on written submissions.

Response. Section 556(d) of the Administrative Procedure Act states that, ''(i)n rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form'' Sourcing area applications are not claims, for either money or benefits. Sourcing area applications may be viewed like a ''license,'' in which case, submission of the evidence could be in written form. However, the agency has sole discretion to adopt procedures for a hearing based solely on written evidence, and only when a party will not be prejudiced. Based on the initial round of sourcing area applications, in which the ability to cross examine witnesses and to bring all parties together was significant in making fair, informative determinations, the Department declines to adopt this suggestion.

Comment. One respondent suggested that final regulations should state explicitly that firms with domestic mills in approved sourcing areas may use non-Federal unprocessed timber from outside an approved sourcing area to supplement their log supply.

Response. The Act provides for the specific exemption from the prohibition against substitution in the form of sourcing areas. Sourcing areas have specific requirements. Among these requirements is that sourcing areas include all of the private and Federal lands that source the manufacturing facility (36 CFR 223.186). To haul unprocessed private timber originating outside of the sourcing area into the sourcing area violates the approved sourcing area boundary. The area from which the sourcing area holder harvests for export has exported unprocessed timber is no longer geographically and economically separate from the area from which the person sources the manufacturing facility (16 U.S.C. 620b(c)(3)). Once the sourcing area holder is no longer abiding by the sourcing area boundaries, the sourcing area holder may no longer depend on the valid exemption from substitution that a sourcing area provides. The sourcing area holder would then be in violation of the sourcing area boundary, as well as the prohibition against substitution by having purchased unprocessed Federal timber west of the 100th meridian in the contiguous 48 States within 24 months of having exported unprocessed private timber from the west. In order to clarify this issue, the Department has added paragraph (k) to § 223.190 that states as follows: ''Transporting or causing to be transported unprocessed private timber from outside of a sourcing area into a sourcing area by the holder of the sourcing area is prohibited as a violation of the sourcing area boundary. Such violation will cause a review of the sourcing area, and could subject the sourcing area holder to the penalties and remedies for violations of the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620, *et seq.*, and its implementing regulations.''

Comment. One respondent stated that the regulations should clarify when a sourcing area is ''in effect.''

Response. An approved sourcing area is in effect until the holder of the sourcing area relinquishes it, or the sourcing area is disapproved upon review of the sourcing area. A sentence clarifying this has been added to new paragraph (m) of § 223.190.

Comment. Several respondents stated that a person with an approved sourcing area should be allowed to relinquish the sourcing area and then export timber from private lands in that area at any time.

Response. The Department disagrees with this comment. While a person with an approved sourcing area may relinquish the sourcing area at any time, the person may not begin exporting from that area immediately. A person may not export unprocessed private timber as long as that person has unprocessed Federal timber in the person's possession or under contract in the same fiscal year, pursuant to the definition of substitution in § 223.186. To clarify this issue with regard to sourcing areas, the Department is amending § 223.190 by adding paragraph (1). Paragraph (1) states that sourcing areas may be relinquished at any time provided the following certification waiver is signed:

''I am relinquishing the approved sourcing area, described in the Secretary's determination in FSAA _____ on _____, 19____. I understand that I may not export unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States during a fiscal year in which I have unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States in my possession or under contract, pursuant to the prohibitions against substitution in the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (''Act'') and its implementing regulations. I also understand that I may not purchase unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States within 24 months of having exported unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States, pursuant to the prohibition against substitution in the Act and its implementing regulations. I make this certification with full knowledge and understanding of the Act and its implementing regulations and do fully understand that exporting unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States during a fiscal year in which I have unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States in possession or under contract, or purchasing unprocessed timber originating from Federal lands west of

the 100th meridian in the contiguous 48 States within 24 months of having exported unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States is a violation of the substitution provisions of the Act, its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.''

The certificate must be signed by the person making such certification or, in the case of a corporation, by its Chief Executive Officer; must be on company letterhead; and must be notarized.

Comment. One respondent had several comments about the certification that accompanies the sourcing area application, found at 36 CFR 223.190(c)(4). First, the respondent recommended striking the phrase ''concerning my timber purchasing and export patterns'' from both the first and second sentences. The respondent stated that applicants should certify to the truth of the entire application, not just the purchasing and export activities, and that the certification could be misunderstood to require applicants to submit information not otherwise required. The respondent further stated that the certification incorrectly cites section 492 in order to prohibit the export of unprocessed private timber. The respondent contends that nothing in the Act prohibits the export of private unprocessed timber.

Response. The Department disagrees that the certification language ''concerning my timber purchasing and export patterns'' should be deleted. Complete and accurate information regarding an applicant's timber purchasing and export patterns is crucial to the determination of whether an applicant's intended Federal timber purchasers are economically and geographically separate from the applicant's exporting area. Regarding the reference to section 492, the Department agrees that this citation could benefit from some clarification. Therefore, the Department is changing the reference to section 492 to a general reference to the entire Act, to ensure that applicants review the entire Act for potential violations. The new citation will be 16 U.S.C. 620, *et seq.* The Department is also deleting the reference to the requirement to cease purchasing unprocessed Federal timber within the proposed sourcing area if the sourcing area is disapproved, since only initial applicants could have been purchasing unprocessed Federal timber before the sourcing area's approval. The Department has also added the phrases ''and its implementing regulations'' to the sentence about the prohibition against exporting unprocessed private timber from within an approved sourcing area. While these changes may clarify the certification language, the Department believes that the original certification published in the interim rule was sufficiently clear. Applicants signing the initial certification are bound by that certification.

Comment. One respondent stated that in order for the Secretary to ''consider equally'' competitors' practices, the Forest Service should have information from the competitors that is as complete and reliable as the applicant's information. Several respondents said that persons submitting information should have to certify that information provided is complete and accurate. The respondent also said that the complete sourcing information of all competitors from the same local vicinity should be examined, not just a contesting competitor.

Response. The Department agrees that complete and accurate information regarding competitors is necessary to determine whether a sourcing area should be approved. The Department makes its own independent assessment of competitors in the same local vicinity based on information submitted, including the Forest Service's records. The Department does not believe that competitors need to provide certain information; the information received is weighted based on its completeness and accuracy, as judged against other submissions. The Department does agree, however, that parties to a sourcing area determination should certify to the truth of what they are providing. Therefore, the Department is amending 36 CFR 223.190 by adding a new paragraph (j) that states that a person submitting a written comment certify at the end of the comment, but before the signature that the information provided is true and accurate, to the best of the person's knowledge, and that failure to provide true and accurate information could be a violation of the False Statements Act (18 U.S.C. 1001).

Comment. One respondent stated that the agency should show which boundaries the Department would approve, and permit the applicant to revise its application to match those boundaries. Another respondent said that sourcing area applications should not simply be denied, but that applicants should be able to modify the proposed sourcing area.

Response. The Act does not require the Department to provide the boundaries that the agency would accept except for applications received by December 20, 1990 (16 U.S.C. 620(c)(4); 36 CFR 223.191). However, the procedures provided for recommended settlements and adjustments during the initial application process, and will provide the same opportunities for subsequent applications.

Comment. One respondent said the rule should state that a person may apply for a sourcing area at any time, but will receive certain advantages if the person applied by December 20, 1990.

Response. The Department believes this was clarified in the final rule of limited scope, published on December 19, 1991 (56 FR 65834). The sections of that rule that have information about sourcing areas may be found at 36 CFR 223.191, and have been repeated in this rule making for clarity.

The rule making that established the procedures for sourcing area applications and reviews of sourcing areas made technical amendments to this section to conform it to the procedures. Additional technical amendments were made in this rule making to conform it to the procedures. Otherwise, except as noted earlier, this section is adopted as proposed.

Section 223.191 Sourcing Area Disapproval and Review Procedures

Section 223.191 was included in the interim rule, published November 20, 1990 (55 FR 48572), and was revised by the final rule published in the **Federal Register** on December 19, 1991 (56 FR 65834). The rule making that established the procedures for sourcing area applications and reviews of sourcing areas made technical amendments to this section to conform it to the procedures. No changes were proposed or are being made to this section by this rule making. Section 223.191 is included in this final rule for continuity and to avoid confusion as to its status.

Section 223.192 Procedures for a Non-Manufacturer

Section 223.192 gives non-manufacturers the opportunity to make the same business decisions as manufacturers; that is, whether to export unprocessed private timber or buy Federal timber. However, because the non-manufacturer does not have a manufacturing facility, the non-manufacturer cannot establish a sourcing area.

Five responses were received from the public on this section of the rule.

Comment: All five respondents commented that they could find nothing in the Act preventing non-manufacturers from having sourcing

areas, or required that timber be processed by the original purchaser. The parties said that the final rule should allow non-manufacturers to apply for sourcing areas from within which such a person could buy Federal timber, but not export timber from private lands.

Several of these respondents stated further that controls on indirect substitution prevent abuses, and that there is no reason to limit competition for Federal timber further by preventing non-manufacturers from bidding in areas that are economically and geographically separate from any areas from which they and their affiliates may export private timber.

Response. The Department disagrees with these comments. The exemption that allows a person to purchase Federal timber while exporting private timber is the sourcing area exemption. The Act clearly directs the sourcing area exception to the prohibition against substitution toward persons with manufacturing facilities. Subsection 490(c)(3) of the Act (16 U.S.C. 620(c)(3)) states that the Secretary may approve the application, ''only if * * * the area that is the subject of the application, in which the timber manufacturing facilities at which the applicant desires to process timber originating from Federal lands are located'' is geographically and economically separate from lands from which the applicant exports. Further, subsection 490(c)(2) of the Act (16 U.S.C. 620b(c)(2)) requires information from the applicant regarding the location of each timber manufacturing facility ''owned and operated'' by the applicant. This scheme clearly indicates that Congress intended the Act to limit the sourcing area exception to persons who both export private timber and manufacture timber domestically. Therefore, the Department declines to adopt these comments in the final rule.

Some minor, no-substantive changes have been made to the text of this section as proposed for technical and editorial clarity.

Section 223.193 Procedures for Reporting Acquisition and Disposition of Federal Timber

Annual report. Section 492(a)(1) of the Act provides that each person who, either directly or indirectly, acquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States shall report the receipt and disposition of such timber to the Secretary concerned, in such form as the Secretary may, by rule, prescribe; and that such person may not be held responsible for the reporting of the disposition of any such timber held by subsequent persons. In addition, the Conference Report on this section states that the conferees intend the Secretary of Agriculture to have a complete account of transactions relating to the acquisition and disposition of unprocessed timber originating from Federal lands (Conf. Rpt. p. 259).

The rule (§ 223.193(a)) as proposed would have required that an annual report on the acquisition and disposition of Federal timber be submitted to the Forest Service. Any person acquiring and/or disposing of such timber would be required to submit an annual report.

As proposed, such report would provide, by fiscal year, an accounting of the unprocessed Federal timber acquired, processed, stored, or transferred to another person. The report would require statements regarding the volume of timber acquired, processed, stored and/or transferred to another person, and the origin of such timber. In addition, the report would require the date of acquisition or disposal, from whom acquired, the timber sale name, the contract number, log brands, bar coded tag number and other markings for timber acquired or disposed. The rule as proposed would require submission of the first report December 1, 1991, and subsequent reports on December 1 of each year thereafter.

Twenty-seven respondents commented on this section. The comments essentially focused on three topic areas: The need for the annual report; the difficulty in obtaining the unprocessed Federal timber inventory information requested; and the burden that the information requirement would place on individual companies.

Comment. Comments received questioning the need for the annual report were as follows:

- Annual reporting requirements are not necessary and they are unduly burdensome.
- An annual report may be appropriate for holders of the State of Washington indirect substitution quotas, but should be limited to the facts necessary to show that the quota has not been exceeded.
- The Act does not require retention of these and other records for three years.
- The annual report is redundant; the Department already has this information through the tracking system and/or at the end of each sale.

Response. Section 492 of the Act (16 U.S.C. 620d(a)) states that each person who acquires unprocessed Federal timber, directly or indirectly, shall report to the Secretary the receipt and disposition of such timber. The Secretary will prescribe in the rule the form of the report, which would include frequency. Section 492 of the Act also requires the Secretaries of Agriculture and the Interior to report to Congress on the disposition of unprocessed Federal timber in the west and the practice of indirect substitution, based on the information gathered in subsection (a) (16 U.S.C. 620(b)). Form(s) and reporting frequency as shown in the final rule are those considered to be the minimum necessary to meet the Act's requirements of reporting and monitoring. Retention of these records for three years is important for monitoring purposes, as logs are often in commerce for several years. The annual report is not redundant. The annual report informs the Department as to what volume has been processed and what volume has been exported; the transfer documents inform the Department as to the commercial path of timber. Taken together, these documents allow the Department to track timber from the first purchase through processing or exporting. Further, information gathered at the end of each sale does not account for annual processing of Federal timber by third parties, which the annual report will do.

Comments. Several respondents commented that the information for the annual report required by pre-enactment rules at § 223.48 is sufficient to meet the accounting requirements of the Act, and strongly objected to the volume inventory reporting requirement in the proposed rule. Specific comments included the following:

- Logs generally are sorted by species, size, or grade, and are placed into corresponding storage decks. These decks contain logs from all origins. Tracking such logs by origin would be very costly and impractical.
- To comply with the rule, a purchaser may be forced to buy more land and expand the log yard to accommodate the additional decks needed to separate logs according to origin as well as species, size, grade, etc.
- There is no way to determine the actual volume of Federal timber held in inventory without making estimates at the mill.
- Inventory tagging of each log is possible, but costly. Moreover, tags are easily lost in handling, and many purchases do not have computers and scanners to handle tags.
- The rules would require the scaling and labeling of every log, in addition to branding and marking.
- It is proper to maintain requirements for sale-by-sale disposition

of Federal timber on an annual basis, but 100 percent accountability of each individual log cannot be achieved.

Response. The Department agrees with many of these concerns. Accordingly, the Department has removed the requirements to report volume in inventory at the beginning and end of the year. Otherwise, other than as noted, the Department has adopted the form as proposed, with minimal changes in titles, instructions, and certification language. The information requirements in paragraphs (a)(1) through (a)(7) of § 223.193 in the proposed rule have been reduced and revised in new paragraphs (a)(1) through (a)(5) in this rule as discussed below.

The Department believes that information regarding individual logs acquired is not onerous and provides the Department with information to track logs as required by the Act. Brands other than brands registered by a State or agency are required to have a pictorial representation on the form for purposes of identification, since they do not have registration numbers. Contracts awarded before August 20, 1990, require purchasers to submit an annual report on form FS–2400–46, *Purchaser Certification of Timber Domestically Processed or Exported* (OMB No. 0596–0021, Expires March, 1997). The annual report under § 223.193 of this final rule will be very similar to the present reporting form. Like the present reporting form, the annual report under § 223.193 will include a requirement to record the volume of unprocessed private timber exported. This can be found in new paragraph (4) of § 223.193 of this rule.

The major differences between the present form FS–2400–46 and the new annual reporting form are as follows: (1) The form title is changed to read ''Certification of Receipt and Disposition of Timber Originating from National Forest Lands''; and (2) the instructions state that any person who directly or indirectly acquired or processed timber originating from National Forest System lands in the previous calendar year must complete the annual report. The Department has changed the final rule to require the annual report by calendar year, rather than fiscal year, because of the purchasers' familiarity with reporting by calendar year and to provide consistency with prohibitions in the regulations.

The Department wants to clarify that actual volume must be reported. In order to monitor and investigate transactions, and to prosecute violations of the Act, the Department must have the actual volume recorded. This will enable the Department to validate the accuracy of the information submitted. Further, the Department will be able to meet the Act's requirement to submit the report to Congress based on the information gathered. Further, the Department needs actual volume recorded in order to monitor the annual quota exempted from the indirect substitution prohibition in Washington State. Third party scaling organizations have the ability to provide accounting reports, and do so as a matter of course, which will reduce the reporting burden.

Comment. Several persons commented that if annual reports are required the first one should not be due before the rules have been in effect for the previous year.

Response. The Department agrees. The first annual report will be for the first calendar year in which the rules are published with the first report due March 1 following the first reporting period. Calendar years prior to the rule's publication will be reported on the current FS–2400–46 form.

Comment. One respondent said that the person submitting the annual report should not have to certify that the information is not confidential.

Response. The Department has revised this requirement. If a person submitting the annual report would like something to be kept confidential, the person should so mark the information. The Department will then evaluate the confidentiality of the information pursuant to the applicable laws.

A new paragraph, § 223.193(a)(5)(ii), has been added to assure that the certifier is eligible to acquire unprocessed timber originating from Federal lands in accordance with the Act. This certification is needed to help assure that the requirements of the Act are enforceable.

A new paragraph, § 223.193(a)(5)(iv), has been added to require the retention of the form and records for three (3) years and to make them available for inspection to authorized Federal officials on request. Retention of these records for three years is important for monitoring purposes and for enforcement of the Act, as logs are often in commerce for several years.

Transfer of Unprocessed Federal Timber

Section 492(a)(2) of the Act states that each person who transfers to another person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 states shall, before completing such transfer: (1) Provide to the person receiving the timber a written notice which identifies the Federal origin of the timber, (2) receive from that person a written acknowledgment of the notice and an agreement that person will comply with the Act, and (3) provide the appropriate Regional Forester, or other official to whom such authority has been delegated, with copies of all such notices, acknowledgments, and agreements.

Section 223.193(b) of the proposed rule would require each person who transfers unprocessed timber originating from National Forest System lands to provide such other person with the notice, acknowledgment, and agreement executed on a form provided by the Forest Service. The proposed § 223.193(b) would also require the transferor to provide copies of each such executed form to the appropriate Regional Forester within 10 days of such transfer.

The transferor includes anyone who sells, trades, or otherwise transfers unprocessed Federal timber. The transferor is not only the initial holder of a contract to harvest Federal timber, but is also any person who subsequently acquires the Federal timber, and in turn transfers it to another person.

Proposed § 223.193(b) would require the transferor to state the origin, species, volume, from who acquired, timber sale name, contract number, log brand, bar-coded tag number, and other markings of unprocessed Federal timber on the form. The proposed form would contain a statement that the purchaser of Federal timber, whether directly or indirectly obtained from the Federal government, agrees to maintain records of all transactions involving unprocessed Federal timber for a period of three (3) years from the date of the transfer, and will make all records involving log transactions available to an authorized U.S. Government official upon request.

The proposed form also would include a certificate stating that the information supplied is a true, accurate, current, and complete statement to the best of the transferor's knowledge, and agreeing to send the form to the appropriate Regional Forester or other administering office within ten (10) days of the transfer. The transferor would agree to obtain a fully completed Notice of Origin form from the transferee, and the transferor would acknowledge that failure to report completely and accurately the transfer of unprocessed Federal timber will subject the transferor to the penalties and remedies in the Act and the penalties in the False Statements Act. The transferor would also be required to acknowledge that he or she has read and understands the form. The certification would also require the transferor to

acknowledge that the information provided is not confidential.

Comments. Several comments were received on this procedure. Some respondents were concerned that a seller of Federal logs might be held liable for the illegal actions of the buyer or subsequent buyers, or that the seller would be certifying that the buyer will comply with the Act, including the requirement to retain records.

One person stated that the rule should indicate that a timber seller is exonerated from further liability if all necessary notices, certifications, acknowledgments, and record keeping obligations required under the Act are satisfied.

Response. Section 492(a) of the Act (16 U.S.C. 620d(a)(1)) states that the transferor of unprocessed Federal logs may not be held responsible for subsequent persons' reports of the disposition of such timber. The transaction reporting form to be supplied by the Forest Service, when properly completed and returned to the Forest Service, will release the seller from such liability.

By completing the form, the seller does not certify that the buyer is legally eligible to purchase unprocessed Federal timber pursuant to the Act. The rules and the form require the buyer of the timber to make that certification. The form is a way to notify the buyer, who may have no direct contact with the Federal government, of the rules to which the purchaser is bound.

However, the Department agrees that a statement clarifying liability should appear in the rule. Therefore, the Department has added to the final rule paragraph (4) of § 223.193(b), which states: ''Except as otherwise provided by law, a person who transfers unprocessed Federal timber to another person and meets all notice, certification acknowledgment, reporting and record keeping requirements contained in this section shall be relieved from further liability for such timber pursuant to the Act.''

Comment. One individual stated that the 10-day period for distribution of the completed transfer document was unrealistically short, especially for a company engaged in a large number of such transactions. Another stated that requiring prompt reporting of such comprehensive information is a substantial and costly burden, particularly given the penalties for mis-reporting or making a single mistake. Still another stated that a phase-in period should be allowed so that companies can adjust or alter their accounting system to meet these requirements.

Response. Effective monitoring and enforcement are dependent on prompt reporting of transfers. All the documents needed to report a transfer are available at the time a transfer agreement is reached, therefore there is little reason that more than 10 calendar days are needed to report that transfer to the Forest Service. The Department also does not believe a phase-in period for complying with these requirements is necessary. The proposed rule has given persons ample time to prepare for compliance with the final rule. Therefore, no change in the final rule is needed.

Comment. One respondent said that the certification language in § 223.193(b)(3)(vi) should state, ''an acknowledgment of the prohibition against acquiring unprocessed federal timber *by* a person'' who is prohibited by the Act from purchasing unprocessed Federal timber directly from the United States, rather than *from* a person.

Response. The Department does not agree with the comment. The rule already provides that the person acknowledges that he or she may purchase unprocessed Federal timber in accordance with the Act (§ 223.193(b)(3)(ix)). This separate acknowledgment reminds the person acquiring the timber that Federal timber that may not be purchased directly, may not be purchased indirectly either. No change in the rule is necessary.

Comment. One respondent stated that the transfer form should be shorter, with an acknowledgment of the requirement for domestic processing of unprocessed Federal timber, and an acknowledgment that the transfer of unprocessed Federal timber to persons who are not qualified to acquire Federal timber constitutes a violation of the Act, and an acknowledgment from the person acquiring the timber that the person will domestically process the timber.

Response. The certifications provide that the person receiving the timber knows that the timber must be domestically processed, and that the timber is subject to the prohibition against substitution (§ 223.193(b)(3) (vii) and (ix)). The Department agrees, however, that the person transferring the timber needs to acknowledge that transfer of the timber to persons not qualified to acquire Federal timber constitutes a violation of the Act. Persons not qualified to acquire Federal timber are those who could not acquire that timber directly from the Federal government, in violation against substitution, or those who acquire the Federal timber for export. Completion of the form, including acknowledgment of the buyer's eligibility to acquire the timber is sufficient to protect the seller of the timber from an invalid transfer (New paragraph (4) of § 223.193 relieves a person of liability if all notices, agreements and acknowledgments in this section are met except as otherwise provided by law). Accordingly, a sentence has been added to the certification at § 223.193(b)(2)(ii) that the certifier acknowledges that the transfer of unprocessed Federal timber to a person who is not eligible to acquire such timber either because of a substitution violation, or because the person is acquiring such timber for export is a violation of the Act.

Comment. One respondent stated that a violation of the terms of the certification should not be a violation of the Act, but a violation of the contract.

Response. The terms of the certification include an agreement to comply with the Act, and follow procedures to ensure that the government can monitor the transfer of logs, pursuant to 16 U.S.C. 620d(a). Additionally, the Act states that any violation of the Act or regulations implementing the Act is punishable by fines, the amount of which is determined by the specific circumstances. Further, transfer of logs does not always occur within the context of a government contract, although violation of the Act is grounds for canceling a government contract (16 U.S.C. 620d(d)(2)). Therefore, no change is made to the certification language in response to this comment.

Comment. One respondent outlined an alternative to the certifications, branding and painting developed in the proposed rules. The respondent stated that the Department should certify all purchasers who are authorized to buy Federal timber. This would include manufacturers, non-manufacturers and those who buy Federal timber from third parties.

Purchasers certified to purchase Federal timber would report all transactions, including transfer of private timber, to the agency within 10 days. A transfer agreement would be developed by the agency including the agency certification numbers for buyer and seller, estimated volume and a statement that all logs with yellow paint must be domestically produced.

All Federal logs would be painted on at least one end prior to leaving the sale area. All logs requiring domestic processing which are transferred to a third party would be painted on both ends with yellow paint prior to transfer. All logs transferred to a third party would be hammer branded with a mill brand prior to transfer. Waivers would be provided. The respondent states that

the key to the Act is to show that a person who purchased Federal timber has not sold private timber for export, and that anyone may purchase unmarked logs, but purchasers authorized to purchase Federal timber may not transfer unmarked logs for export. Therefore, there is no reason to identify the origin as long as logs are marked for domestic processing.

Response. The Department disagrees with this approach. First, while the Department can identify purchasers of Federal timber, it has no way of identifying persons who acquire Federal timber beyond the first purchaser. Therefore, a national certification of all persons who acquire Federal timber is not possible. Second, while it is true that a major component of the Act is that a person acquiring Federal timber has not transferred private timber for export, simply certifying that a person may acquire Federal timber is inadequate for enforcement of the Act. A person with a sourcing area may acquire Federal timber from within that sourcing area, and may transfer private timber for export outside of the sourcing area. Simply identifying the person is inadequate; the Department would need to establish where the timber originated to determine whether there had been a violation. The ability to purchase unmarked logs would render meaningless any tracking system. The Department would have no way of knowing whether a violation of the Act had occurred, based on either the transferor or the origin of the logs. Further, a person acquiring such logs also has no assurance that the transaction is legal. The Department has tried to make the tracking system as straightforward as possible while enabling the monitoring of the logs, as required by the Act. No change in the rule has been made in response to this comment.

Comment. One person stated that the amount of information that must be promptly reported by the buyer and seller of logs, coupled with the penalties for each violation of these requirements, make these requirements a substantial barrier to transferring logs to processors that can mill them to their highest and best use.

Another respondent commented that requiring that records be maintained for 3 years will create considerable additional storage requirements, and that there is no reason to collect the amount of information required in this section. This person said that only a signed statement stipulating that the logs must be domestically processed should be required.

Response. The Act requires the Secretary to draft any regulations necessary to implement the Act. The Department believes that the names of the log seller and the buyer, the log identification markings, the Federal agency contract number, and the volume of Federal logs included in the transaction is the minimum amount of information needed to monitor compliance with the Act. The log identification marks and contract number are necessary to determine origin of the logs and the original buyer. The volume is necessary to track logs, to determine the extent of an alleged violation and to help assess civil penalties. The retention of unprocessed log transfer transaction statements is necessary for the Department to monitor and assure compliance with log export and substitution restrictions. Without such records, the Department could not fulfill its responsibilities to implement and enforce the Act. Therefore, the Department declines to adopt these comments.

Comment. One person commented that because many log transfer agreements are made before actual volume measurements are performed, the Department must be willing to accept estimated log volumes rather than actual log volumes on the transfer form.

Response. The Department will accept volume estimates used in the actual transaction. If the transaction is based on standing tree (cruise) estimates, that will be the volume used for reporting the transaction. If the transaction is based on actual log scale volume, that is the volume to be reported. The phrase ''estimated volume or actual volume if the transfer is based on log scale volume,'' has been added to paragraph (b)(1) in response to this comment.

Comment. One person commented that there is no justification for requiring either the transferrers or the transferees to certify that the information submitted is not confidential.

Response. The Department has revised this requirement. If a person signing the transfer form would like to keep something confidential, the person should mark the information. The Department will then evaluate the confidentiality of the information pursuant to the applicable laws. Therefore, the Department has modified the sentence on confidentiality in the form and in paragraph (b)(3)(ix) of proposed § 223.193.

Comment. One respondent stated that a person transferring unprocessed federal logs must certify that the person understands the Act and regulations which can involve complex legal issues. Two respondents expressed concern that the rule requires persons to reach legal conclusions on issues where the law is unclear with regard to the log transfer documents and the annual reports, and complained that the administering agency is unwilling to give advisory opinions.

Response. While the Act, and therefore the regulations implementing the Act can be complex, a purchaser of unprocessed timber must understand these rules in order to abide by the law. No enforcement of the reporting requirements of the Act or these rules will occur until after this rule is published. The Forest Service is willing to meet with anyone to discuss the Act and/or the regulations when the regulations are finalized. However, the Department cannot give legal advice. No change in the rule is necessary.

A new paragraph, § 223.193(b)(3)(ii), has been added to clarify that the purchaser of Federal timber agrees to allow Federal officials access to log storage and processing facilities for the purpose of monitoring compliance with the Act and implementing regulations. This requirement clarifies that the Federal logs in possession of an indirect purchaser are subject to the same review as Federal logs acquired directly. Without access to log storage and processing facilities, the Department believes the Act's requirements to monitor indirect substitution and enforce its prohibitions would be severely hampered because of an inability to monitor log movement.

A new paragraph, § 223.193(b)(3)(iv), has been added to assure that indirect purchasers are aware the Act requires anyone who acquires federal timber to report the timber's receipt and disposition, 16 U.S.C. 620d(a)(1). Therefore, this paragraph references the required annual report.

Other than the changes noted, the Department has adopted several minor changes to the proposed text of this section for technical and editorial clarity which have no substantive effect.

Section 223.194 Procedures for Reporting Acquisition and Disposition of Private Timber

Under the Act, a person who sells or otherwise transfers private timber that requires domestic processing and has in the person's possession or subsequently acquires unprocessed Federal timber could be in violation of the prohibition against substitution if the buyer of the unprocessed private timber were to export it. To protect a person who deals in both unprocessed Federal and unprocessed private timber from such

substitution liability, proposed § 223.194 would require such a person to notify and receive an acknowledgment from the person acquiring the unprocessed private timber that such timber must be domestically processed, not exported, and would require that such transfers be reported to the Forest Service within 10 days of the transaction. The Forest Service would provide a form for such purpose. The statement on the proposed form would provide: (1) Notice to the person receiving the unprocessed private timber that exporting that timber would violate the regulations prohibiting substitution; (2) Notice to the person receiving the unprocessed private timber that the timber has been identified for domestic manufacturing by marking the logs with highway yellow paint that must be retained on the timber; (3) The acknowledgment of the notice by the recipient; (4) An agreement to include the statement in any subsequent transaction documents; (5) A signed copy of the transaction statement to be sent to the applicable Regional Forester within ten (10) calendar days of the transaction; and (6) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from Federal or private lands west of the 100th meridian in the contiguous 48 states for a period of three (3) years from the date of disposal by manufacturing or transfer.

Comments. This requirement drew 18 responses, most of which generally opposed the reporting requirements involving the acquisition and disposition of private timber, and specifically opposed the frequency requirements. These respondents said that their internal accounting and office practices made compliance within the 10 day time frame impossible. Other respondents said the reporting procedures were satisfactory.

Response. The Act specifically prohibits substitution of unprocessed Federal timber for export unprocessed private timber, and assigned the responsibility for monitoring compliance of these prohibitions to the Secretaries of Agriculture and the Interior. Reporting the acquisition and disposition of private timber, along with random site visits, are crucial to fulfilling this monitoring responsibility. The Department cannot enforce the Act's prohibition against substitution and the specific exceptions, without the ability to track unprocessed private timber. Therefore, the Department declines to adopt the suggestions that the proposed reporting of private timber transactions be removed from the rule. As stated earlier, the Department believes that prompt reporting of transfers is vital to effective enforcement of the Act and believes that reporting such transfers within 10 calendar days is not excessively burdensome.

Comment. One respondent commented that the requirement to notify the person receiving unprocessed private timber that the timber has been identified for domestic processing by a spot of yellow paint that must be retained would be extremely expensive, and particularly difficult for small businesses.

Response. In order to enforce the Act's restrictions against direct and indirect substitution, it is necessary to mark all logs that must be domestically processed. Otherwise, there is no way to distinguish between private logs that may be exported, because there is no link to the acquisition of federal logs, and private logs that may not be exported because of the potential violation of substitution. The additional requirements, required by the Act's prohibitions, are the minimal means of identifying logs to be processed. No change in the rule has been made in response to this comment.

Comment. One person stated the rule should require persons who sell private timber from within their approved sourcing area to notify purchasers that they cannot export the logs under the Act.

Response. The rule's ''Notice and Acknowledgment of Requirement to Domestically Process Timber Originating from Private Land'' accomplishes this objective.

Comment. One respondent states that the rule should clarify that the transaction statements are not required from persons who trade in private timber that originates from outside a sourcing area.

Response. There are no requirements to complete such a statement for transactions involving unprocessed private timber from outside a person's approved sourcing area, because such timber does not require domestic processing. However, the Department agrees that this could be clarified. Therefore, paragraph (a) of § 223.194 has been amended to delete the language regarding private lands located within a sourcing area, and to add a new sentence at the end of the paragraph as follows: ''Unprocessed timber originating from private lands located outside of a sourcing area may be transferred by the holder of the sourcing area, or by persons acquiring such unprocessed timber who are eligible to export such timber, without including such a statement.''

Paragraph (a) of § 223.194 has also been amended to note that the reporting requirement applies to timber that requires domestic processing, including private timber originating within a sourcing area. This clarification is included to encompass all timber that requires domestic processing.

Paragraphs (b)(1) and (2) have been revised to include the required contents of the notice, including an agreement to permit authorized Federal officials access to private log storage and processing facilities in order to monitor compliance with the Act. As with monitoring of Federal log transfers, discussed earlier in this preamble, without permission to enter into private log storage and processing facilities of those persons in possession of private timber that requires domestic processing, the Department believes the indirect substitution prohibitions of the Act will be substantially unenforceable. This monitoring is a necessary component of enforcing the prohibition against substitution through the export of private timber that requires domestic processing, pursuant to § 223.189(a)(3).

Paragraph (b) has also been revised to include acknowledgments that the person transferring or acquiring the unprocessed private timber is: (1) Aware that failure to comply with the domestic manufacturing requirement for the unprocessed timber or failure to notify subsequent persons of these requirements is a violation of the Act, (2) understands that failure to completely and accurately report and identify unprocessed timber is a violation of the Act and the False Statements Act (18 U.S.C. 1001), and (3) the form has been read and understood. These acknowledgments are needed to assure that the certifier is aware of and understands the potential consequences of violating the Act. These changes assure that the requirements of the Act are enforceable.

Paragraph (b) has also been revised to remove the actual certification statements appearing on the form from the rule.

Further, the Department has clarified in new paragraph (c) that persons who fully comply with the notification requirement in this section are not liable for the actions of persons who subsequently acquire such timber in violation of the Act, except as otherwise provided by law.

The Department has adopted several minor changes to the proposed text of this section for technical and editorial clarity but which have no substantive effect.

General Comments Relating to the Reporting Requirements of Both Sections 223.193 and 223.194

Comment. Several respondents indicated the reporting requirements are too burdensome and costly. Some stated the burden is greatest on the smaller businesses that must commit substantial amounts of their limited time and resources to understanding and complying with these rules. Some stated that these requirements could eliminate some small businesses from continuing to purchase Federal logs. One respondent suggested that there be an annual notification by company, rather than a notification on each sale. One respondent said that it is impractical to require accounting by individual logs. Two respondents wrote that while these are new and added administrative procedures for the purchasers of Federal timber, the provisions appear reasonable and necessary to fulfill the intent of the legislation.

Response. As discussed previously, the annual reporting requirements of the Act do not differ significantly from what is presently being required in contracts awarded before August 20, 1990. The difference is that under the Act, persons who acquire National Forest System timber indirectly must submit an annual report. Previously only those persons who acquired unprocessed timber from National Forest System lands directly had to submit an annual report. In addition, the transfer reporting requirements under the Act are new. Contracts awarded before August 20, 1990 do not have this reporting requirement. Individual logs have never been requested to be identified in annual reports; reporting is done by volume.

The Act requires that a person notify the recipient about the Federal origin of the timber before a transfer occurs; an annual report would not meet this requirement. Completion of these transaction reports, which are on forms furnished by the Forest Service, takes from 5–20 minutes each to complete. The Department does not believe the new forms will have a major impact on timber purchasers, including small businesses.

The most time-consuming task is the annual report. However, most National Forest System timber purchasers have been providing similar information in the previous annual report since 1973.

The initial impact to all businesses will be the submitting of two different sets of forms: those for sales awarded before August 20, 1990, and those awarded on or after August 20, 1990.

The Department anticipates that at least 90 percent of the pre-enactment contracts will be completed and closed within three years of publication of this rule. The dual reporting burden will be steadily and substantially reduced over that period.

Comment. One respondent asked that the terms ''transaction'' and ''transaction statement'' be defined. Specifically, the respondent was concerned that a ''transaction statement'' not include log prices.

Response. The Department agrees. These terms are used in § 223.194 and have been defined in § 223.186 of this rule as follows: ''*Transaction* means an arrangement involving the transfer of unprocessed timber. *Transaction statement* is a signed copy of one of the transaction reporting forms in 36 CFR 223.193 and 223.194.'' The transaction statement does not require information regarding log prices.

Comment. One person was concerned that the forms are inappropriate for a corporation or partnership because they are written for the individual. The person suggested that the forms be revised to accommodate all types of businesses.

Response. The forms are drafted to accommodate the definition of a *person,* which includes the individual as well as corporations. Therefore, the suggestion is not adopted. The individual signing the form is responsible for the content in that person's official capacity.

Comment. One respondent stated that maintaining records for three years is not necessary.

Response. The retention of acquisition and disposition records is necessary for the Department to monitor and ensure compliance with the prohibitions against export and substitution. Logs are often in commerce for several years. Without the availability of records, the Department could not fulfill its responsibilities to implement and enforce the Act on National Forest System lands by tracking the timber back to its source. The Act provides for the Secretary to draft such regulations as may be necessary to implement the Act.

Paragraphs (a)(5)(iv), (b)(2)(iv), and (b)(3)(I) of § 223.193 and paragraphs (b)(1)(iv) and (b)(2)(iv) of § 223.194 implement this requirement of the Act. Paragraphs (b)(1)(iv) and (b)(2)(iv) of § 223.194 have been revised to make them consistent with paragraphs (a)(5)(iv), (b)(2)(iv), and (b)(3)(I) of § 223.193, relating to the availability of records. The portion of paragraph (a) of § 223.194 that concerns the notification statement has been changed to paragraph (b), and has been revised to clarify that notification is necessary only for timber that requires domestic processing. Some other minor changes have been made to the proposed text of this section for technical and editorial clarity but which will have no substantive effect.

Section 223.195 Procedures for Identifying and Marking Timber

Section 223.195 of the proposed rule would require marking and identifying of unprocessed logs originating from National Forest System lands located west of the 100th meridian in the 48 contiguous States. Proposed § 223.195 would require each unprocessed log originating from National Forest System lands west of the 100th meridian in the contiguous 48 states to be marked on each end with a spot of highway yellow paint and with a hammer brand approved for use by the Forest Supervisor of the National Forest from which the unprocessed log originates. In addition, if the unprocessed log is sold to a third party, proposed § 223.195 would require it to be tagged on one end with a bar-coded tag, which would identify the origin of the unprocessed log by timber sale contract number, region, national forest, ranger district, and log number.

As proposed, § 223.195 would permit only the Regional Foresters of Regions 1, 2, 3, and 4 to waive the requirements to hammer-brand on an individual sale basis if there is no history of logs from any origin being exported from the area of the purchaser's operations if the purchaser is in compliance with these regulations, including the provision relating to transfer documents, and the purchaser has certified that he or she has not exported logs from that area in the last 24 months.

Proposed § 223.195 would reserve highway yellow paint for identifying logs originating from west of the 100th meridian in the contiguous 48 states that require domestic manufacturing.

Comments. This section drew 70 responses. Forty-four comments opposed the proposed use of bar code tags as burdensome, costly and unnecessary to implement the Act.

Response. In analyzing all comments and conducting surveys of National Forests and bar code tag manufacturers, the Department concludes that at this time bar coding would not be an effective or efficient way to track logs. Therefore, the bar coding requirements have been removed from the final rule. Likewise, these requirements have been removed from the reporting requirements in §§ 223.193 and 223.194. However, authorization is provided for the testing of alternative methods for possible future revision of this rule.

Comments. Twenty-four comments addressed the double-end hammer branding and yellow painting requirements for identifying National Forest logs. None supported this requirement, but several persons said they preferred hammer branding and painting to tagging logs with bar codes. Comments included the following points:

- Increased branding and painting makes the entire industry pay for the actions of a few bad characters.
- Some sales are so far removed from export yards that increased branding and painting are not necessary.
- Branding and painting requirements compromise safety, because they are manual work that must be done on the landing.
- The waiver provisions are unrealistic, too stringent, and not adjustable to local circumstances or conditions. Judgment as to requirements should be returned to the field.
- Painting and branding small and lower valued timber is problematic; flexibility regarding requirements should be made available in Regions 5 and 6, to accommodate conditions on the ground.
- Painting and branding should be required only on most logs and/or a minimum of 10 logs per load. Many logs larger than 10″ or 12″ should be branded on one end.
- Branding and painting on both ends conflicts with the utilization standards that require logs to be bucked at the break; this is impossible to do because the long is shattered.

Response. Following the reassessment of the use of bar coded tags, the Department believes that hammer branding and yellow painting are the best options currently available for identifying logs not available for export. The Department must be able to identify and track unprocessed Federal and private logs ineligible for export. To make tracking possible and to comply with the Act, all Federal and private logs required to be domestically processed must have long lasting and easily recognizable identifying marks which will stay on the logs until processed.

The Department acknowledges that some logs have more export value than others, and that it is difficult to get a legible brand on a small diameter log 100 percent of the time. With regard to the utilization standards, each end may need to be sawed in some instances. Consequently, the Department has rewritten proposed § 223.195 in the final rule to include paragraphs (e) and (f).

Paragraph (e) permits the Chief of the Forest Service to waive the painting requirements on National Forest logs and private logs when other identification methods that are equal or better than the yellow painting method are found. An easily identified marking indicating which logs must be domestically processed is essential for enforcement purposes. However, this waiver allows for developing technology.

Paragraph (f) amends the criteria by which the Regional Forester may waive all or a portion of the branding requirements in Regions 1, 2, 3 and 4. The Regional Forester remains the appropriate person to grant waivers. The Regional Forester has the broad perspective regarding exporting in the region. Given the Department's recent experiences with logs being transported great distances for commercial purposes, this broad perspective is essential to make the waiver determination. The proposed requirement that exporting not have occurred in the area of the purchaser's operations has been modified in the final rule. The requirement in the final. rule is that exporting not have occurred in the previous five years in the purchaser's area of operations. While providing some time for logs to be in commerce, this modification also accounts for changed market conditions. However, to ensure effective enforcement of the Act, a new paragraph (iv) has been added to § 233.195(f)(1) to state that if the Regional Forester determines that exporting is or has been occurring within the person's area of operation within the previous 5 years, the Regional Forester shall revoke the waiver. Further, the certificate for Regions 1–4 states that the person not have exported in the area of operations in the past five years, to parallel the waiver requirement. In addition, the waiver is valid only for the person's area of operations. The Department believes it is helpful to provide flexibility to those purchasers whose logs would not have the opportunity to intermingle with export traffic. However, it is essential to monitor those logs that do leave the area of operations, and have a greater opportunity to intermingle with export traffic, in order to enforce the Act. Unmarked logs make enforcement of the Act's restrictions impossible, since their ability to be exported is not documented.

Paragraph (f) also allows for waiver of branding on one end on logs less than ten inches in diameter on the large end within Region 5 & 6 that will be processed at a specifically identified facility. The Department recognizes that it may be difficult to brand a small log. One respondent suggested a waiver for logs less than eight inches in diameter on the large end. However, the Department is permitting waiver of one-end branding for logs less than ten inches on the large end, because there has not been significant demand for round wood of this size in the export market, so the chance of these logs mingling with exportable logs is low. However, paragraph (iv) states that if the Regional Forester determines that logs ten (10) inches or less in diameter inside bark on the large end are being exported in the Region, the Regional Forester shall revoke the waiver. This allows the agency to respond effectively to changed conditions. All waivers are granted on an individual timber sale basis.

The Department has also moved the waiver of painting requirements to paragraph (e), following the requirements to paint unprocessed timber originating from private lands in paragraph (d). This move clarifies that the waiver of painting requirements may apply to all unprocessed logs otherwise requiring yellow paint.

With regard to safety, logging is universally recognized as an inherently dangerous occupation. To minimize safety hazards to both private and Federal employees, logging contractors, landowners and managing agencies must work together to provide a reasonably safe working environment. Log accountability and identification must also be provided to assure that the government receives full payment for logs and that logs requiring domestic processing are not exported. No change in the rule is necessary; however, the Department is always interested in more efficient and effective methods for identifying and tracing logs to assure compliance with the Act.

Comment. One respondent commented that long logs are manually bucked, decked, and held for processing through a small sawmill or chip-and-saw. These logs are ''in process,'' but the regulations do not recognize this situation. More flexible identification of in-process logs is necessary—or Regional Foresters need more funding and direction to monitor and enforce existing regulations. Another respondent stated that non-grade logs are often difficult to brand and paint, discouraging the use of small and highly defective logs because of cost.

Response. The proposed rule would require that if a log is cut into two or more pieces, each piece shall be identified in the same manner as the original piece. This provision was deemed necessary to assure that all Federal logs and other logs requiring

domestic processing are properly identified, even when such logs are remanufactured into shorter length segments, to prevent possible exporting.

However, the Department has concluded that in some situations it may be highly impractical, very costly and not necessarily in the Government's interest for a person to have available for use all branding hammers needed to replace brands assigned to logs of Federal origin that he or she may be acquiring from other persons. Consequently, paragraph (b)(1) permitting the use of yard catch brands has been added to § 223.195 of the final rule as follows: ''A generic log hammer brand, knows as a ''catch brand'', used to identify ownership, may be used to replace lost, removed, unreadable or otherwise missing brands where such use is authorized by the Regional Forester and approved by the Contracting Officer. Use of such a catch brand on a log or log segment will signify Federal origin.''

Further, the Department recognizes that sometimes such re-branding may not be appropriate or necessary, particularly where such pieces are being immediately processed, and/or final processing is to continue on-site, within a relatively short period of time. Accordingly, the Department has added the following to paragraph (b)(2) of § 223.195: ''The requirement to preserve identification of log pieces shall not apply to logs cut into two or more segments as part of the mill in-feed process immediately before processing. Log segments that are returned to or placed in storage must be marked on both ends with yellow paint.''

With regard to non-grade logs that may be difficult to brand and paint, the Department has provided a waiver of branding on one end for logs 10″ or less, assuming they are not being exported in the Region. The Department believes that the waiver addresses this respondent's concern.

Comment. One respondent objected to the waiver in a person's area of operations. The respondent stated that his company had many areas of operations, and one area should not be affected by another.

Response. The area of operations that will be considered is within the Region where the waiver will occur. Otherwise, the Regional Forester could not grant a waiver. A smaller area would lose meaning in terms of identifying transport of logs for export. No change to the rule is necessary in response to this comment.

Comment. The same respondent said that the criterion in the proposed rule at 36 CFR 223.195(c)(4)(ii), now in paragraph (f)(1)(ii) of the final rule, that persons must certify that they have not exported unprocessed timber from private lands west of the 100th meridian in the contiguous 48 States in the previous 24 months means that those with statutory exemptions from substitution in other circumstances (sourcing areas) could not receive a waiver.

Response. The waiver of branding would have to be evaluated along with any exemptions from substitution to which a person is subject. However, even if exporting is allowed in the same area that Federal timber may be purchased, for instance, under the indirect substitution exemption in § 223.203, this would not affect branding requirements. The Department would need to monitor the flow of logs especially carefully in this situation, to insure that the intermingling of exportable and non-exportable logs does not occur. No change in the rule is necessary in response to this comment.

Comment. One respondent stated that the waiver provision is too limited to be useful, because it requires no history of logs from any origin being exported from the area. This respondent felt that few waivers will be implemented because Region 1 logs have been exported, and other Regions will be reluctant to grant waivers.

Response. The Department believes the revision of the waiver provisions in the final rule discussed above adequately addresses this comment. The revised waiver procedures give the Regional Foresters the ability to address unique local conditions.

Comment. One respondent stated that the annual requirement to certify that a Federal timber purchaser has not exported would suffice for the certification in the waiver of branding requirements.

Response. The Department believes that a separate certification for the particular purpose of waiving branding in a specific area is less confusing, since the purposes of each form are different.

Comment. One respondent suggested that notification of log sales between companies within a Region be reported to the Federal government in lieu of the marking and certification requirements. Only logs leaving a region would be required to be marked.

Response. In order to monitor export activity effectively, logs must be identified. A notification will not assist in identifying logs. Consistent and accurate tracking of these portable, fungible products requires individual log identification.

Analysis of these comments revealed that the proposed rule failed to state when such identifying marks should be applied to the logs. With regard to National Forest System logs, the product identification provision, C(T)6.82, in the timber sale contract requires that painting and branding of products be done before removal from the sale area. This has been a long-standing requirement and practice. Therefore, the Department has added this requirement to paragraph (c) of the final rule to avoid any possible confusion as to when the identifying marks are to be applied to logs originating from National Forest System lands.

With regard to private logs requiring domestic manufacturing, they must be marked before removal from the harvest area. If private logs are acquired by a person who may not export such logs, the logs must be marked by the person acquiring the logs at the time of the acquisition. This requirement has been added to paragraph (d) of the final rule.

Comment. One person stated that an estimated additional cost of $1.00 per thousand board feet will be incurred to comply with the new regulations requiring the painting of private and Federal logs and that these requirements appeared to not recognize the principle of cost/benefit ratios.

Response. The Department recognizes that some companies will incur additional costs by complying with these marking requirements. However, with the exception of the requirement to paint private logs, very similar branding and painting requirements have been required of National Forest timber sale purchasers in most areas of Regions 5 and 6 for at least 20 years, and more recently in Region 1. The Department believes the additional cost of properly identifying logs requiring domestic manufacturing in areas where branding and painting has not been extensively utilized in the past is necessary for effective implementation of the Act.

Comment. One respondent stated that adding yellow paint to private logs could cause confusion, because Federal and private loads could not be readily distinguished from a distance.

Response. The purpose of the yellow paint is to identify the log as requiring domestic processing, not to identify ownership or origin. Loads of National Forest, Bureau of Land Management, State Forest, and some private logs in Oregon and Washington currently carry yellow paint marks. Log identification is maintained by the log brands and truckload receipts displayed on each respective load. Therefore, the Department believes that the yellow paint does not cause confusion, and that no revision of the rule is warranted.

Comment. One respondent was concerned with the requirement that each unprocessed log shall be marked on each end with a spot of yellow paint and with a hammer brand approved for use.

Response. The Department expects timber sale administrators to administer contract requirements in a firm and reasonable manner to assure compliance with the objectives and provisions of the Act and these regulations. This rule provides for waivers of the requirements in some circumstances.

Comment. One respondent stated that the Department should waive the bar code tagging and highway yellow paint requirements on private timber for any purchaser who doesn't export logs.

Response. The requirement to use bar coding has been removed in the final rule. The export of private timber which has been identified as requiring domestic processing is a substitution violation. Only private timber that requires domestic processing must be painted. The yellow paint markings are essential to monitor compliance with the prohibitions against substitution. However, the Department has adopted a limited waiver of painting requirements where special conditions warrant, pursuant to § 223.195(e) of the final rule.

Comment. One reviewer stated a need for quick release of log brands for reuse.

Response. The proposed rule would require a 24-month waiting period before release of an assigned log brand to ensure that all logs harvested under the assigned brand had been domestically manufactured. The 24-month period guards against substitution violations. The Department recognizes that in those States that require registered log brands, many companies will have to develop and register additional log brands to meet this requirement. The Forest Service will strive to release brands for re-assignment as soon as possible following the 24-month period. No revision of the rule is necessary.

The Department has made several minor changes to the text of this section as proposed for technical and editorial clarity, but which have no substantive effect.

Section 223.196 Civil Penalties for Violation

Section 492(c) of the Act establishes civil penalties for violation of the Act of not more than $500,000 for each violation or three times the gross value of the unprocessed timber involved for a violator who exported or caused to be exported unprocessed Federal timber; not more than $500,000 for a violator who willfully violates any provision of the Act or any regulation issued under the Act; not more than $75,000 for each violator who commits a violation in disregard of such provisions and/or regulations; and not more than $50,000 for each violation by a violator who should have known that the action constituted a violation of such provisions and regulations.

The last three penalties may be assessed regardless of whether a violation caused the actual export of unprocessed Federal timber. The Act also provides that a penalty assessed under the Act shall not exclude any other penalty provided by law and shall be subject to review in an appropriate United States district court.

The proposed rule at § 223.196 merely repeats the language of the Act.

This section drew four comments.

Comment: Some respondents felt that 100 percent compliance with the branding, painting, log tagging, bar coding, and inventory requirements is impossible. They thought that minor instances of an illegible brand, or a missed log brand or paint should be handled in relation to the infraction. These respondents felt the final rule must be flexible and attainable so that responsible and prudent purchasers can operate without facing civil penalties. In the view of these respondents, current log accountability requirements adequately meet the Act's enforcement objectives. Another respondent said that the Forest Service should list priorities for enforcement.

Response: The Department recognizes that the law and these rules must be administered with prudence and good judgment. The Act imposes strict fines on violations of ''any provision'' of the Act or regulations implementing the Act. The Act also states that the Secretary *may* assess fines based ''on the record and after an opportunity for a hearing.'' Therefore the Act ensures that those persons accused of violations will have a full and fair opportunity to present their views and that the actual assessment of penalties is discretionary. The Department believes that the regulations as written reflect the Act. The Department expects all timber sale purchasers and other persons acquiring unprocessed Federal timber to comply with the log identification requirements contained in this rule. The Forest Service will enforce the Act and these regulations as written, and will consider infractions on a case-by-case basis. The Department disagrees that current log accountability requirements are adequate and declines to adopt this comment.

Comment. One person stated that the penalties for non-willful offenses are excessive, and another person stated that the ''stiff penalties for lost or damaged tags are unreasonable.''

Response: The Department has no authority to change the penalties stipulated in the Act. However, Congress established maximum penalties (''not more than''), but not minimum penalties. The severity of the penalty to be assessed in each case will be based on the severity of the offense. Bar code tags are not required in the final rule. No change in the rule as proposed is necessary to respond to this comment.

Comment. One person suggested making the penalty for exporting Federal timber severe enough to deter violations of the Act.

Response. Congress authorized the Secretary to assess civil penalties of up to $500,000 for each violation, and to debar and cancel contracts in order to deter illegal exports or substitution activities. Moreover, the penalties provided by the Act do not exclude any other penalty provided by law. The Department has no statutory authority to establish penalties beyond those specified by law. Therefore, this comment cannot be adopted.

Section 223.197 Civil Penalty Assessment Procedures

Section 492(c) of the Act (16 U.S.C. 620d(c)) provides that if the Secretary of Agriculture finds, on the record and after an opportunity for a hearing, that a person has violated the Act or its regulations, he or she may impose certain civil penalties for such violation(s). For purposes of assessing these penalties, the Department has added the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) to the list of statutes governed by the adjudicatory procedures at 7 CFR 1.130, *et seq.* in a separate, final rulemaking document (56 FR 22105, May 14, 1991).

Comment. Two persons commented that, as determined in ''*Tall* v. *United States*'', factual determinations can be made only by a jury, not simply on an administrative record.

Response: The Administration Procedure Act (APA), under 5 U.S.C. 554, governs formal adjudication if a statute requires a determination to be made, ''on the record after opportunity for an agency hearing * * *.'' The Act requires the Secretary to assess certain penalties if he/she finds, ''on the record and after an opportunity for a hearing'' that a person meets the elements of the various penalties (16 U.S.C. 620d(c)(1)).

While section 554 exempts an adjudication from the formal administrative adjudication process if a matter is subject to a subsequent trial of the law and the facts de novo in a court (5 U.S.C. 554(1)), this exception is not found in the Act. On the contrary, the Act states that an administrative penalty shall be, ''subject to review in an appropriate United States district court'' (16 U.S.C. 620d(c)(3)). In other words, adjudication of civil penalties may occur in an ordinary formal administrative process, with record review in district court. None of the research data bases revealed a case entitled ''*Tall* v. *United States*'' dealing with this issue.

Section 223.198 Administrative Remedies for Violation

Section 492(d)(2) of the Act provides that, in addition to the provision for debarment in subpart C of this part, the head of the appropriate Federal department or agency also may cancel any contract entered into with a person found to have violated the Act or regulations or contracts issued under the Act.

The proposed rule would clarify that such a finding shall constitute a serious violation of contract terms pursuant to § 223.116(a)(1) regarding cancellation of contracts.

Three persons responded to this section.

Comment. These persons suggest that no adverse action should be taken against a timber purchaser before expiration of all appeal rights on debarment proceedings. To do otherwise would violate substantive and procedural due process protections.

Response. To protect the public's interest the Department will continue to suspend timber sale operations as soon as improprieties are determined. This is consistent with current procedure under existing regulations. The procedures applicable to the debarment of persons violating the Act, or any regulation or contract issued under the Act are not applicable to existing contracts which are under consideration for cancellation. The debarment procedures apply to future timber sales and future acquisitions of Federal timber. Any debarment action will be taken consistent with the Act and the regulation issues pursuant to the Act. No change in the rule as proposed is necessary to address this comment.

Comment. One respondent suggested that contracting officers be given appropriate guidance on which violations justify the drastic remedy of contract cancellation, including direction on considering whether the violation was intentional, produced significant financial benefits to the perpetrator, etc. Another respondent said that the authority to cancel contracts should not be delegable.

Response. Adequate checks and balances currently exist. Having been given broad powers under the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*), contracting officers are still required to draw counsel and advice from Forest Service law enforcement specialists to determine criminal intent, the Regional Forester's and Chief's contracting specialists, the Department's Office of the General Counsel (OGC), and in some cases the Department of Justice's U.S. Attorney's Office before deciding which violations justify contract cancellation. No additional direction in this final rule is necessary.

Section 223.199 Procedures for Cooperation with Other Agencies

Section 495 of the Act (16 U.S.C. 620f) states that the Secretaries of Agriculture and Interior shall, in consultation, each prescribe new, coordinated, and consistent regulations to implement this title on lands which they administer. Subsection 491(d)(2) of the Act (16 U.S.C. 602c(d)(2)) authorizes the States to cooperate with Federal and State Agencies with appropriate jurisdiction to further the intent of this title. The Act also requires the Secretary of Commerce to issue certain orders and promulgate rules and guidelines necessary to carry out this title.

State and Federal government agencies clearly have individual responsibilities under the Act. Cooperation among these agencies in monitoring and enforcing these regulations provides the most efficient use of limited personnel and financial resources. Cooperative Agreements and/or Memoranda of Understanding between governmental agencies are common in similar situations where there are common responsibilities and interests.

Cooperative efforts to enforce this Act might include exchanging information on sourcing area applications, sourcing area approvals or disapprovals, log brands being used, logging activity, and proposed timber sales. Agencies may cooperate on monitoring export facilities or log storage areas so that each agency would not be required to make separate visits. This cooperative effort would also reduce the impact on the operators of the export facilities and storage areas.

The Department has consulted with and discussed cooperative agreements with the Bureau of Land Management, the Department of Defense and other agencies managing public timber resources in the development of the rule as proposed.

Comment. One person commented that neither the preamble nor the proposed regulations mentions any consultation or any effort to be coordinated and consistent at the national level.

Response. Cooperative agreements and Memoranda of Understanding with other public agencies may be developed at the National Forest, Regional or National Office levels, depending on the program impacts and range of interest. National manuals and handbooks provide direction and guidelines for drafting assistance and consulting with higher-level officials and the Department's Office of General Counsel before entering into such agreements. No further direction is necessary in this final rule.

Section 223.200 Determination of Surplus Species

Section 489(b) of the Act (16 U.S.C. 620a(b)) and the proposed rule would require that determinations that specific quantities of grades and species are surplus to domestic manufacturing needs must be made in accordance with Title 5, United States Code, section 553, the rule making section of the Administrative Procedure Act. The proposed rule also would require that withdrawals of such determinations be done in accordance with the same procedure. Section 491(h) of the Act (16 U.S.C. 620c) requires withdrawals of such determinations to be done ''by rule.''

The proposed rule would require that review of a determination that a quantity of grade or species is surplus must be reviewed at least once every three (3) years. Notice of the review will be published in the **Federal Register**. The public will have at least 30 days to comment on the review.

The proposed rule specifically requested comments on the current determinations that Alaska yellow cedar and Port Orford cedar supplies are surplus to domestic manufacturing needs. These comments will be used to develop a separate rule making on surplus species determinations. The proposed rule repeated the interim rule which continued the surplus designation of these two species until hearings could be held, in order to avoid the disruption that could be caused by suddenly discontinuing their present surplus status.

Fourteen responses were received on this section. Most of these addressed whether Port Orford cedar should be classified as being surplus to domestic

manufacturing needs. Other species discussed and/or proposed for surplus consideration were Alaskan yellow cedar, Western juniper, Rocky Mountain juniper and Pacific yew.

Comment. Six respondents stated that there is a strong domestic demand for Port Orford cedar, and urged that Port Orford cedar no longer be exported in log form. Five other respondents stated Port Orford cedar is still surplus to domestic manufacturing needs, and that if the species were to be declared non-surplus it would disrupt employment and adversely affect the local communities where it is grown and harvested.

Response. The Department is considering these comments in its development of the proposed rule on surplus species.

Comment. One respondent stated that hearings could pose problems for small manufacturers, who might be ''disciplined'' by larger companies for opposing the export of Port Orford Cedar.

Response. The Act requires a ''hearing'' on the issue of surplus species. Hearings will be conducted via the rule making process. Comments may be submitted anonymously in response to the proposed rule on surplus species when it is published.

Comment. Comments regarding other species were as follows:

One person stated that Alaska yellow cedar is not surplus to domestic manufacturing needs, and that a hearing would find mills willing to purchase and process the species should it be prohibited from export. Another party stated that Alaska yellow cedar is surplus.

One person responded that Western/Rocky Mountain/Utah juniper should be made a surplus species. This respondent and another respondent suggested also that Pacific yew should also be declared surplus and permitted to be exported because there is little if any domestic use for this species.

Response. Again, these comments will be analyzed in the development of the proposed determination of the surplus species regulation. All interested parties should be prepared to submit comments regarding this proposed determination during the comment period provided in the **Federal Register** publication.

Comment. Two persons commented that the proposed procedures in the rule for determining surplus species appear adequate, and another party commented that the entire set of regulations should be finalized before determining if Port Orford cedar or Alaska yellow cedar supplies exceed domestic manufacturing needs.

Response. The Department agrees with these comments. No revision of the rule is necessary. Some minor changes to the text of this section as proposed have been made for technical and editorial clarity, but have no substantive effect.

Section 223.201 Limitations on Timber Harvested in Alaska

Section 223.161 of the current regulations is repeated, with minor editing, in this Subpart to consolidate all export and substitution restriction rules applicable to all States located west of the 100th meridian. The repetition was needed to make clear that the provision regarding Alaska applies to contracts entered into before, during, and after the date of enactment of the Act.

No comments were received on this section. Therefore, the Department adopts this section, with only minor editing.

Section 223.202 Information Requirements

This rule imposes additional information collection requirements in the form of applications, certifications, reports and record keeping requiring clearance from OMB for compliance with the Paperwork Reduction Act. In the proposed rule, this section provided estimates of the time needed to collect this information, and provided addresses to send comments on these estimates.

The comments submitted concerning the information collection requirements relating to the proposed annual report and the transaction notices are discussed in the Department's responses to comments received on §§ 223.193 and 223.194.

Comment. Several respondents stated that there will be a significant, additional paperwork burden on private companies.

Response. Section 492 of the Act (16 U.S.C. 620d) specifically requires that log transactions be reported. The implementing regulations require the minimum burdens necessary for enforcement of this and other provisions of the Act. The Department has worked to lessen the paperwork burden in this final rule.

Section 223.203 Indirect Substitution Exception for National Forest System Timber From Within Washington State

Section 223.203 was included in the final rule published in the **Federal Register** on December 19, 1991 (56 FR 65834). Section 223.203 is included in this rule making for continuity and to avoid confusion as to its status. The names of the persons obtaining a share of the Washington State quota of unprocessed Federal timber that is exempt from the prohibition against substitution, and the amount of the share for each person, are identified in a new paragraph (e) of § 223.203. The Act requires that the names of persons obtaining such shares and the amount of the shares be established ''by rule.'' 16 U.S.C. 620b(b)(2)(A).

Otherwise, the Department has made minor changes to the text for technical and editorial clarity, including the removal of paragraph (a) in its entirety as redundant and unnecessary. The prohibition against indirect substitution discussed in this paragraph is covered in § 223.189 of this subpart. The remaining paragraphs in this section have been correspondingly re-coded to reflect the deletion in this rule making. These changes have no substantive effect.

General Comments

Several comments that did not fit into any of the above regulatory sections are addressed here.

Comment. One respondent expressed the belief that face-to-face communications between potentially affected timber industry companies and the Federal land management agencies are critical in the development of any regulation.

Response. Publishing through the **Federal Register** and receiving public comments was the most efficient and cost effective method available to develop these rules. The Forest Service plans to conduct several informational meetings nationwide after the final regulations go into effect. This will give interested persons an opportunity to gain a better understanding of the rules and how they will be applied.

Comment. One respondent thought that assumptions made in the National Forest Management Plans on local timber demand will be outdated because exporting firms will gain additional access to certain Federal timber through sourcing areas, and that some forest plans may have to be amended to reflect this change in timber demand.

For example, increased demand might prompt the Forest Service to increase the annual allowable sale quantity in a particular forest plan. However, such an increase could significantly affect the environmental quality of the forest. Direct or indirect environmental impacts may result from the proposed rule, and such impacts should be analyzed in a review in compliance with the National Environmental Policy Act (NEPA).

Another respondent expressed concern for the lack of any environmental review associated with the rule. The respondent stated that the rule permits previously ineligible persons to buy Federal timber. The respondent stated that could change the timber demand which might cause the Forest Service to increase the allowable sale quantity in a particular forest plan. The respondent concluded that such an increase might have substantial environmental ramifications on the affected forest, and therefore an environmental review is necessary.

Response. The Department has conducted an environmental assessment and made a Finding of No Significant Impact (see information under ''Environmental Impact'', below). The existing rules at 36 CFR 223.160 are less restrictive as to who may buy Federal timber than the Act and these implementing regulations. The existing rules require only that a company not export private timber from within an area tributary to its domestic processing plant if that person also purchased Federal timber directly from a Federal agency to supply that plant. If the company had an established ''historic quota'' that company could purchase Federal timber and export private timber from within its tributary area if neither its historic purchase quota nor its historic export quota were exceeded in any calendar year.

However, the existing rules did not restrict indirect substitution, so when a company reached its historic export or purchase quota, it could continue to acquire from a third party all the federal timber it wanted from within its tributary area for its plant.

Moreover, a company's tributary area was not subject to approval by the Department. The tributary area was simply the geographic area from which unprocessed timber was delivered to a processing facility and was not subject to a formal review and approval process. The tributary area changed with the circumstances.

This Act eliminates historic quotas, and prohibits companies from exporting private timber from within an approved sourcing area, or from west of the 100th meridian in the contiguous 48 States if the company has no approved sourcing area, and prohibits indirect substitution. Instead of the tributary areas under the old rule, the Act requires sourcing areas to be formally approved by the Secretary—and those sourcing areas can be changed only upon review and agreement of the Department. This Act imposes far more restrictive conditions in order for exporting companies to acquire federal timber than under the pre-enactment rules.

Further, any proposed change in the allowable sale quantity on a forest would be subject to an environmental review at the time of the proposal.

All aspects of forest plans are subject to monitoring and periodic reviews, including the allowable sale quantity (ASQ). All reviews shall consider the Standards and Guidelines from which the specific plan was developed, plus any modifications, and shall be conducted within NEPA guidelines. This regulation proposed only to limit the persons eligible to purchase National Forest timber. The regulation does not affect the quantity or quality of timber to be sold, where the sales are located (other than west of the 100th meridian in the contiguous 48 States), the contract period, or operating seasons. The Department disagrees that this rule may cause an increase in demand for National Forest System timber.

Comment. One respondent stated that log exporting problems should be regulated at the docks where the ships are loaded by stopping all log exports, not by burdening private companies with excessive log identification and reporting regulations.

Response. The Act requires monitoring at the time of acquisition. The Act does not prohibit export of all logs, but of Federal logs and some private logs. Given this divergent treatment of a fungible commodity, it is necessary to regulate the logs in transit, as well as on the export docks.

Comment. Several respondents said that the regulations will have adverse effects on competition and employment, as mill owners will not be competitive in bidding for private timber, and that the annual effect of the regulation will be over $100 million.

Response. While the Act does monitor commerce, it also preserves processing jobs and natural resources domestically. The regulations implement these objectives through monitoring and enforcement mechanisms.

Comment. Several respondents commented that the proposed rule imposes significant new requirements on small business timber sale purchasers and other entities.

Response. The proposed rule in and of itself does not impose significant new requirements. The Act places certain requirements on persons engaged in acquiring unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States and exporting unprocessed private timber originating from private lands. The Act also requires the Secretary of Agriculture to implement the requirements of the Act through this rule making. The final rule simply implements the provisions of the Act. Further, the Department has modified the rule in order to further minimize the burdens on timber purchasers while still enabling enforcement of the Act.

Amendment to 36 CFR Part 261—Prohibitions

Part 261—Prohibitions would be amended to include 16 U.S.C. 620(f) as part of the authority citation.

Section 261.6 Timber and Other Forest Products

The proposed rule would add paragraph (i) to § 261.6 making a violation of the Act, or its implementing regulations, subject to penalties under Part 261. Subsections 492(c) (1) and (2) and Subsection 492(d) of the Act specifically provide for civil penalties and administrative remedies for violations of the Act that are included in another section of the proposed rule. Subsection 492(c)(3) of the Act states that the penalties provided under § 492(c) do not exclude any other penalty provided by law. Proposed § 261.6(i) is such a penalty. Inclusion of violations under §§ 223.185 through 223.202 in § 261.6(i) is essential for consistent and complete implementation of the Act. The prohibition at § 261.6(g) regarding the current export regulations existing at subpart D would be retained to continue enforcement of regulations governing timber sale contracts issued prior to enactment and publication of this final rule.

Comment. One said that the Act did not authorize criminal penalties, nor are they necessary in light of the serious civil and administrative sanctions.

Response. Criminal sanctions are authorized by the Organic Act, 16 U.S.C. 551, and by 18 U.S.C. 3559(a)(7) and 18 U.S.C. 3571(b)(6). These sanctions applied to export violations before enactment of the Act, and are another tool for enforcement. Consequently, it is not necessary to change this section.

Summary

Having fully considered the relevant comments received on the proposed rule, the Department is adopting this final rule, with the modifications previously described in response to comments received. This rule supersedes those provisions of the interim rule published in the **Federal Register** on November 20, 1990. Together with the rule of December 19, 1991, (56 FR 65834) this rule comprises the implementing regulations for the

Forest Resources Conservation and Shortage Relief Act of 1990 except for the separate rule making to be done on surplus species.

This rule is effective upon publication. This rule making relates to agency management, public property and contracts, and therefore pursuant to the Administrative Procedure Act (5 U.S.C. 553(a)(2), is exempt from the 30-day delay between publication of a rule and its effective date. Further, a delayed effective date is not required if a rule is a substantive rule which grants or recognizes an exemption (5 U.S.C. 553(d)(1)). This rule provides certain exemptions from the restrictions on substitution, and therefore may be effective immediately. In addition, a delayed effective date is not required if good cause is found and published with the rule (5 U.S.C. 553(d)(3)). Good cause exists to make this rule making effective upon publication due to the many deadlines in the Act for monitoring and enforcement of the Act.

Environmental Impact

Based on both experience and environmental analysis, this final rule will have no significant effect on the quality of the human environment, individually or cumulatively, and the Forest Service has made a Finding of No Significant Impact (40 CFR 1508.27). This rule only establishes certain administrative procedures to limit the persons qualified to purchase unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States. It does not affect the amount of timber to be sold, where the sales will be located, when they will be operated, the contract period, the contract size, resource protection requirements, or any aspect of on-the-ground contract performance. This rule does not alter the requirement that each timber sale must be analyzed and documented in compliance with the National Environmental Policy Act and its implementing regulations. Copies of the Environmental Assessment and Finding of No Significant Impact may be obtained by writing or calling the person or office listed earlier in this document under **FOR FURTHER INFORMATION CONTACT**.

Controlling Paperwork Burdens on the Public

Because of the previous publication of portions of this comprehensive rule making, some sections of this rule making already have OMB control numbers. Previously approved OMB Control Numbers 0596–0114, 0596–0115, and 0596–0021, as well as new information collection requirements, are being consolidated under OMB Control Number 0596–0114.

The procedures in §§ 223.189 and 223.192, and some of the procedures in § 223.190 were approved by the Office of Management and Budget (OMB) and assigned Control Number 0596–0114 upon issuance of the interim rule. Control Number 0596–0114 has been reapproved by OMB for use through May 31, 1997. OMB approved the information collection requirements in §§ 223.191 and 223.203 for use through August 31, 1995, and assigned them Control Number 0596–0115. OMB approved the information collection requirements in § 223.48 and § 223.87 for use through May 31, 1997 and assigned them Control Number 0596–0021; the information collection requirements in § 223.48 and § 223.87 have been revised.

The application and reporting procedures in §§ 223.187, 223.193, 223.194, 223.195, and some of the procedures in § 223.190 of this final rule contain new record keeping and reporting requirements as defined in 5 CFR part 1320 and, therefore, impose additional paperwork burdens on the affected public. The Office of Management and Budget (OMB) has approved these requirements, and assigned them Control Number 0596–0114.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed in law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Regulatory Impact

This final rule was reviewed under USDA procedures and determined to be a significant rule under Executive Order 12866 on Regulatory Planning and Review because of the strong public interest expressed in the proposed rule. Accordingly, this final rule was subject to OMB review.

This rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that the action will not have a significant economic impact on a substantial number of small entities as defined by that Act. Economic impacts associated with implementation of this rule result directly from the Forest Resources Conservation and Shortage Relief Act, and not from the rule itself. The rule imposes no additional requirements on small business timber sale purchasers or other small entities beyond what is required by the Forest Resources Conservation and Shortage Relief Act of 1990.

This rule has been reviewed in accordance with the principles and criteria contained in Executive Order 12630 and it has been determined that the rule does not pose the risk of a taking of constitutionally protected private property.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under this rule: (1) All state and local laws and regulations are in conflict with this rule or which could impede its full implementation will be preempted; (2) no retroactive effect will be given to this rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

List of Subjects

36 CFR Part 223

Exports, Government contracts, National Forests, Reporting requirements, and Timber sales.

36 CFR Part 261

Crime, Law enforcement, and National Forests.

Therefore, for the reasons set forth in the preamble, part 223 and part 261 of Title 36 of the Code of Federal Regulations are amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for part 223 is revised to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, unless otherwise noted.

Subpart B—Timber Sale Contracts

2. Revise § 223.87 to read as follows:

§ 228.87 Requirements of bidders concerning exports.

In order to have a bid considered responsive for a sale of timber from National Forest System lands, each bidder must certify that the bidder is eligible to purchase timber from National Forest System lands consistent with the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) and its implementing regulations at 36 CFR part 223, and that the bidder's timber purchase and export activities are in compliance with the timber export and substitution provisions of the Forest Resources Conservation and Shortage

Relief Act of 1990 (16 U.S.C. 620, *et seq.*) and its implementing regulations at 36 CFR part 223.

Subpart C—Suspension and Debarment of Timber Purchasers

3. Revise paragraph (a) of § 223.130 to read as follows:

§ 223.130 Scope.

(a) This subpart prescribes policies and procedures governing the debarment and suspension of purchasers of National Forest System timber. This subpart further prescribes policies and procedures governing those persons who violate the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*).

* * * * *

4. Revise § 223.131 to read as follows:

§ 223.131 Applicability.

These regulations apply to purchasers of National Forest System timber as well as to those persons who violate the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*). These regulations do not apply to Forest Service procurement contracts which are governed by regulations at 41 CFR 4–1.6.

5. Amend § 223.133 by revising the definitions of *Affiliates, Debarment,* and *Purchaser* and by adding in alphabetical order definitions of *Federal lands* and *Person* to read as follows:

§ 223.133 Definitions.

* * * * *

Affiliates are business concerns or persons, whose relationship entails the following:

(a) either party directly or indirectly controls or has the power to control the other; or

(b) a third party directly or indirectly controls or has the power to control both. In determining whether affiliation exists, the Forest Service shall consider all appropriate factors, including, but not limited to, common ownership, common management, common facilities, and contractual relationships. Further guidelines to be used in determining affiliation are found in the Small Business Administration regulation in 13 CFR 121.401.

* * * * *

Debarment means action taken by a debarring official under §§ 223.136 through 223.140 to exclude a purchaser from Forest Service timber sale contracts for a reasonable, specified period of time. A purchaser so excluded is ''debarred.'' Debarment pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.* means action taken by a debarring official under §§ 223.136–223.140 to exclude persons from entering into any contract for the purchase of unprocessed timber originating from Federal lands and from taking delivery of unprocessed Federal timber purchased by another party for the period of debarment.

* * * * *

Federal lands means, for the purposes of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), lands that are owned by the United States, but does not include any lands the title to which is:

(a) Held in trust by the United States for the benefit of any Indian tribe or individual,

(b) Held by any Indian tribe or individual subject to a restriction by the United States against alienation, or

(c) Held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

* * * * *

Person means any individual, partnership, corporation, association, or other legal entity, and includes any subsidiary, subcontractor, parent company, and business affiliates.

* * * * *

Purchaser means any person, who:

(a) Submits bids for, is awarded, or reasonably may be expected to submit bids for or be awarded, a Forest Service timber sale contract;

(b) Conducts business with the Forest Service as an agent or representative of another timber sale purchaser; or

(c) For the purposes of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act), any person who violates the Act or any regulation or contract issued under the Act, or any person who may reasonably be expected to enter into a contract to purchase or receive delivery of unprocessed Federal timber in violation of the Act or its implementing regulations.

* * * * *

6. Revise § 223.135 to read as follows:

§ 223.135 Effect of listing.

(a) Except as otherwise provided in paragraph (b) of this section, purchasers debarred or suspended in accordance with this subpart shall be excluded from bidding on or award of Forest Service timber sale contracts. The Forest Service shall not knowingly solicit or consider bids from, award contracts to, approve a third party agreement with, or renew or otherwise extend, except pursuant to the terms of a contract term adjustment, an existing timber sale contract with these purchasers, unless the Chief of the Forest Service or authorized representative determines, in writing, that there is a compelling reason for such action.

(b) In addition to the provisions of paragraph (a) of this section, persons debarred pursuant to § 223.137(g) shall be prohibited from entering into any contract to purchase unprocessed timber from Federal lands and shall also be precluded from taking delivery of Federal timber purchased by another person for the period of debarment.

* * * * *

7. Amend § 223.136 by revising paragraph (b) to read as follows:

§ 223.136 Debarment.

* * * * *

(b) *Effect of proposed debarment.* (1) Upon issuance of a notice of proposed debarment by the debarring official and until the final debarment decision is rendered, the Forest Service shall not solicit or consider bids from, award contracts to, approve a third party agreement with, renew or otherwise extend, except pursuant to the terms of a contract term adjustment, any contract with that purchaser. The Chief of the Forest Service or authorized representative may waive this exclusion upon a written determination identifying compelling reasons to continue doing business with that purchaser pending completion of debarment proceedings.

(2) In addition to paragraph (b)(1) of this section, issuance of a notice of proposed debarment under § 223.137(g) shall preclude such person from entering into any contract to purchase unprocessed timber originating from Federal lands, and from taking delivery of unprocessed Federal timber from any other party who purchased such timber.

* * * * *

8. Amend § 223.137 by adding paragraph (g) to read as follows:

§ 223.137 Causes of debarment.

* * * * *

(g) Violation of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*). (Act) or any regulation or contract issued under the Act.

* * * * *

9. Revise paragraphs (a) and (b) of § 223.139 to read as follows:

§ 223.139 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s):

(1) The debarring official shall consider any suspension period or

period since issuance of the notice of proposed debarment in determining the debarment period.

(2) Generally, a debarment for those causes listed at § 223.137 (a)–(f) of this subpart should not exceed three (3) years, except as otherwise provided by law.

(3) A debarment for the causes listed at § 223.137(g) shall not exceed five (5) years.

(b) The debarring official may extend the debarment for those causes listed at § 223.137 (a)–(f) of this subpart for an additional period if that official determines that an extension is necessary to protect the Government's interest. However:

(1) A debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based;

(2) If debarment for an additional period is necessary, the debarring official shall initiate and follow the procedures in § 223.138 to extend the debarment.

* * * * *

Subpart D—Timber Export and Substitution Restrictions

10. Revise § 223.159 to read as follows:

§ 223.159 Scope and applicability.

The rules of this subpart apply to all timber sale contracts awarded before August 20, 1990, the date of enactment of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*). The rules at § 223.162 shall remain in effect for all contracts awarded on or after August 20, 1990, until September 8, 1995. Contracts awarded on or after August 20, 1990 are subject to the rules of subpart F of this part, unless otherwise noted. Contracts awarded on or after September 8, 1995 are governed in full by subpart F.

§ 223.161 [Removed and reserved]

11. Remove and reserve § 223.161.

§ 223.163 [Removed]

12. Remove § 223.163.

13. Subpart F is revised to read as follows:

Subpart F—The Forest Resources Conservation and Shortage Relief Act of 1990 Program

Sec.

223.185 Scope and applicability.
223.186 Definitions.
223.187 Determination of unprocessed timber.
223.188 Prohibitions against exporting unprocessed Federal timber.
223.189 Prohibitions against substitution.
223.190 Sourcing area application procedures.
223.191 Sourcing area disapproval and review procedures.
223.192 Procedures for a non-manufacturer.
223.193 Procedures for reporting acquisition and disposition of unprocessed Federal timber.
223.194 Procedures for reporting the acquisition and disposition of unprocessed private timber.
223.195 Procedures for identifying and marking unprocessed timber.
223.196 Civil penalties for violation.
223.197 Civil penalty assessment procedures.
223.198 Administrative remedies.
223.199 Procedures for cooperating with other agencies.
223.200 Determinations of surplus species.
223.201 Limitations on unprocessed timber harvested in Alaska.
223.202 Information requirements.
223.203 Indirect substitution exception for National Forest System timber from within Washington State.

§ 223.185 Scope and applicability.

This subpart implements provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) that became effective upon enactment or as otherwise specified in the Act. As of September 8, 1995, this subpart applies to unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States that requires domestic processing. Except as provided later in this paragraph, this subpart applies to all unprocessed timber originating from National Forest System lands west of the 100th meridian in the contiguous 48 States acquired from timber sale contracts awarded on or after August 20, 1990. The rules regarding substitution at § 223.162 of subpart D apply to unprocessed timber acquired from timber sale contracts awarded between August 20, 1990, and September 8, 1995, as provided in § 490(a)(2)(A) of the Act. The rules regarding reporting the acquisition and disposition of unprocessed Federal timber at § 223.193 of this subpart apply to all transfers of unprocessed Federal timber originating from National Forest System lands west of the 100th meridian in the contiguous 48 States regardless of timber sale contract award date.

§ 223.186 Definitions.

The following definitions apply to the provisions of this subpart:

Acquire means to come into possession of, whether directly or indirectly, through a sale, trade, exchange, or other transaction. The term ''acquisition'' means the act of acquiring. The terms ''acquire'' and ''purchase'' are synonymous and are used interchangeably.

Act means the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101–382, 104 Stat. 714–726; 16 U.S.C. 620–620j).

Area of operations refers to the geographic area within which logs from any origin have neither been exported nor transported to an area where export occurs. The area of operations will be determined for individual Forest Service Administrative Units or groups of Administrative Units by the Regional Foresters of Regions 1, 2, 3, and 4 on an as-needed basis, and used as part of the criteria for evaluating requests to waive the identifying and marking requirements for unprocessed Federal logs.

Cants or *Flitches* are synonymous, and mean trees or portions of trees, sawn on one or more sides, intended for remanufacture into other products elsewhere.

Civil penalties:

Willful disregard means a person knew or showed reckless disregard for the matter of whether the person's conduct is prohibited by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620, *et seq.* with regard to the prohibition against exporting unprocessed Federal timber (including causing unprocessed timber to be exported).

Willfully means a person knew or showed reckless disregard for the matter of whether the person's conduct is prohibited by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. *et seq.*, or regulations issued under the Act, even though such violation may not have caused the export of unprocessed Federal timber in violation of the Act.

Disregard means to ignore, overlook, or fail to observe any provision of the Act or a regulation issued under this Act, even though such violation may not have caused the export of unprocessed Federal timber in violation of the Act.

Should have known means committing an act that a reasonable person in the timber industry would have known violates a provision of the Act or regulations issued under the Act, even though the violation may not have caused the export of unprocessed Federal timber in violation of the Act.

Each violation refers to any violation under the Act or its implementing regulations with regard to a single act, which includes but is not limited to a single marking (or lack thereof) on a single log, the export of a single log, or a single entry on a document.

Export means transporting, or causing to be transported, either directly or through another party, unprocessed

timber to a foreign country. Export occurs:

(1) On the date that a person enters into an agreement to sell, trade, exchange or otherwise convey such timber to a person for delivery to a foreign country;

(2) When unprocessed timber is placed in an export facility in preparation (sorting, bundling, container loading etc.) for shipment outside the United States; or,

(3) When unprocessed timber is placed on board an ocean-going vessel, rail car, or other conveyance destined for a foreign country.

Federal lands means lands that are owned by the United States west of the 100th meridian in the contiguous 48 States, but do not include any land the title to which is;

(1) Held in trust by the United States for the benefit of any Indian tribe or individual;

(2) Held by any Indian tribe or individual subject to a restriction by the United States against alienation; or

(3) Held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

Finished products means products from trees, portions of trees or other roundwood products processed to standards and specifications intended for end product use.

Fiscal year means the Federal fiscal year beginning October 1, and ending the following September 30.

Gross value means the total value a person received from the transfer of unprocessed Federal timber involved in a violation, before production, delivery, agent fees, overhead, or other costs are removed.

Hammer brand refers to an identifying mark or brand composed of numbers, letters, characters, or a combination of numbers, letters, or characters permanently attached to a hammer, or other similar striking tool. The hammer brand must make a legible imprint of the brand in the end of a log when struck.

Highway yellow paint refers to an oil base or equivalent yellow paint of lasting quality comparable to the yellow paint used to mark highways.

Log refers to an unprocessed portion of a tree that is transported to a manufacturing facility or other location for processing, transferring to another person, or exporting. ''Logs'' is synonymous with ''timber''.

Manufacturing facility means a permanently located processing plant used to convert unprocessed timber into products.

Non-manufacturer means a person who does not own or operate a manufacturing facility.

Person means any individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, parent company, and business affiliates. Persons are affiliates of each other when either directly or indirectly, one person controls or has the power to control the other or a third party or parties control or have the power to control both. In determining whether or not affiliation exists, consideration shall be given to all appropriate factors, including but not limited to common ownership, common management, common facilities, and contractual relationships.

Private lands means lands, located west of the 100th meridian in the contiguous 48 States held or owned by a person. Such term does not include Federal lands or public lands, or any land the title to which is;

(1) Held in trust by the United States for the benefit of any Indian tribe or individual;

(2) Held by any Indian tribe or individual subject to a restriction by the United States against alienation; or

(3) Held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

Processed means timber processed into products listed in § 223.187 of these regulations.

Purchase has the same meaning as *acquire*. The terms are used interchangeably.

Same geographic and economic area means the land within the boundaries of an approved sourcing area.

Sourcing area means the geographic area approved by the Secretary which includes a person's timber manufacturing facility and the private and Federal lands from which the person acquires or intends to acquire unprocessed timber to supply such manufacturing facility; a sourcing area must be geographically and economically separate from any area from which that person harvests for export any unprocessed timber originating from private lands.

Substitution occurs when:

(1) A person acquires, directly or indirectly, unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States and engages in exporting or selling for export, unprocessed timber originating from private lands within the same geographic and economic area; or

(2) A person acquires, directly or indirectly, unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States and, during the preceding 24-month period, exported unprocessed timber originating from private lands; or

(3) A person exports or sells for export, unprocessed timber originating from private lands within the same geographic and economic area in the same calendar year that the person has unprocessed timber originating from Federal lands in the person's possession or under contract; or

(4) A person purchases, directly or indirectly, unprocessed timber originating from Federal lands if such person sells or otherwise transfers unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing, to a third party if that third party or successive parties export that unprocessed private timber. A third party or successive parties who acquire such unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing may not export such timber.

Transaction means an arrangement involving the transfer of unprocessed timber.

Transaction statement is a signed copy of one of the transaction reporting forms in 36 CFR 223.193 and 223.194.

Transfer means to pass title, sell, trade, exchange, or otherwise convey unprocessed timber to another person.

Unprocessed timber means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use and intended for remanufacture. Unprocessed timber does not include products intended for remanufacture that meet the criteria listed in § 223.187(a) (2) or (3). For the purposes of reporting and identifying under §§ 223.193, 223.194 and 223.195, unprocessed timber also means timber products listed in § 223.187 of these regulations, and other timber products including house logs that are part of a structure kit, that are indistinguishable from other unprocessed timber.

§ 223.187 Determinations of unprocessed timber.

(a) *All species except western red cedar.* Unprocessed timber, as defined in § 223.186 of this Subpart, does not include timber processed into any one of the following:

(1) Lumber or construction timbers, except western red cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on 4 sides, not intended for remanufacture. To determine whether

such lumber or construction timbers meet this grade and intended use standard, the shipper of record must have in its possession for each shipment or order, and available for inspection upon the request of the Forest Service:

(i) A legible copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard; and,

(ii) A statement by the manufacturer certifying under the penalties provided in section 492 of the Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001) that the products in the shipment or order are intended to be used as shipped, are manufactured into products, or processed into pulp, and are not to be manufactured into other products. The certification statements shall be made in accordance with paragraph (b) of this section. The certification statements in paragraph (b) of this section are not required if the lumber or construction timbers described in paragraph (a)(1) of this section or the pulpwood bolts described in paragraph (a)(8) of this section otherwise may be exported without regard to an intent to remanufacture or process into pulp. For instance, because the timber originates from private land from which timber may be exported.

(2) Lumber, construction timbers, or cants for remanufacture, except western red cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on 4 sides, not to exceed 12 inches (30.5 cm) thick. To determine whether such lumber, timbers, or cants meet this grading standard, the shipper of record must have in its possession for each shipment or order and available for inspection, upon the request of the Forest Service, a legible copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard.

(3) Lumber, construction timbers, or cants for remanufacture, except western red cedar, that do not meet the grades referred to in paragraph (a)(2) of this section and are sawn on 4 sides, with wane less than ¼ of any face, not exceeding 8¾ inches (22.2 cm) thick.

(4) Chips, pulp, or pulp products.

(5) Veneer or plywood.

(6) Poles, posts, or piling cut or treated with preservatives for use as such.

(7) Shakes or shingles.

(8) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp. Shippers of record of such pulpwood bolts must have in their possession, and available for inspection upon request of the Forest Service, in accordance with paragraph (b) of this section, a manufacturer's certificate that such bolts are intended for processing into pulp.

(9) Pulp logs or cull logs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of logs into chips.

(b) *Export product certifications.* (1) Manufacturers of lumber or construction timbers described in paragraph (a)(1) of this section and pulpwood bolts described in paragraph (a)(8) of this section, shall certify to the following statements:

(2) *Lumber or construction timbers;* ''I certify that the products in the shipment identified by my shipping order number _____ dated _____, are manufactured in accordance with the attached order from (*buyer*) of (*address*), numbered _____ and dated _____, are intended to be used as shipped and are not to be remanufactured into other products. I make this certification with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (Act) and its implementing regulations. I fully understand that exporting unprocessed timber originating from Federal lands or unprocessed timber from private lands which is required to be processed domestically is a violation of this Act, its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violations.''

(3) *Pulpwood bolts.* ''I certify that the pulpwood bolts in the shipment identified by my shipping order number _____ dated _____, are manufactured in accordance with the attached order from (*buyer*) of (*address*), numbered _____ and dated _____, are intended to be processed into pulp and are not to be remanufactured into other products. I make this certification with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations. I fully understand that exporting unprocessed timber originating from Federal lands or unprocessed timber from private lands which is required to be processed domestically is a violation of this Act, its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violations.''

(4) *Signatory procedures.* Certificates shall be on company letterhead, and signed by the person manufacturing the shipment. In the case of a corporation, the certificates must be signed by a person authorized, in writing, by the Chief Executive Officer pursuant to 36 CFR 223.187(b)(4), to sign the certificates in 36 CFR 223.187(b) on behalf of the corporation.

(5) *Chief Executive Officer Authorization.* The authorization by the Chief Executive Officer shall be on company letterhead, shall be notarized, and shall read as follows:

''I authorize _____ to sign the certificates in 36 CFR 223.187(b) on behalf of (*name of corporation*). I make this authorization with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (Act) and its implementing regulations. I fully understand that exporting unprocessed timber originating from Federal lands or unprocessed timber originating from private lands which is required to be processed domestically is a violation of this Act, its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.''

(6) Exporters of other timber products originating from Federal lands not specifically listed in § 223.187 which may develop export markets in the future may also require similar certification statements. Such statements will be provided by the Forest Service.

(c) *Western red cedar.* Unprocessed western red cedar timber does not include manufactured lumber authorized for export under license by the Department of Commerce, and lumber from private lands processed to standards established in the lumber grading rules of the American Lumber Standards Association or the Pacific Lumber Inspection Bureau, or timber processed into any of the following products:

(1) Lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better, with a maximum cross section of 2,000 square centimeters (310 square inches) for any individual piece of processed western red cedar, regardless of grade. To determine whether such lumber meets these established standards, grades and size restrictions, the shipper of record must have in its possession for each shipment, and available for inspection upon the request of the Forest Service, a legible copy of a lumber inspection certificate certified by a lumber

inspection/grading organization generally recognized by the industry as setting a selling standard. Export restrictions governing western red cedar timber harvested from Federal, State or other public lands are found in 7(i) of the Export Administration Act of 1979 as amended (50 U.S.C. appendix 2406(i)), and implementing regulations at 15 CFR 777.7.

(2) Chips, pulp, and pulp products;

(3) Veneer and plywood;

(4) Poles, posts, pilings cut or treated with preservatives for use as such and not intended to be further processed; and

(5) Shakes and shingles.

(d) *Finished Products.* Shippers of record of products manufactured from unprocessed western red cedar originating from Federal lands, acquired by the manufacturer under the exemption from the prohibition against indirect substitution at § 223.189(e)(1), must have in their possession for each shipment a certificate from the manufacturer that such products are *finished products* as defined in § 223.186 of this subpart. The certification statement shall read as follows:

(1) ''I certify that the products in the shipment identified by my shipping order number _____, dated _____, are manufactured in accordance with the attached order from ____ (buyer) ____ of _____ (address) _____, numbered ____ and dated _____, are intended for end product use. I understand that only western red cedar products that are *finished products* are exempt from the prohibition against indirect substitution in the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620b(b)(1)) and its implementing regulations. I make this certification with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations. I fully acknowledge and understand that to acquire western red cedar under the indirect substitution exemption in 16 U.S.C. 620b(b)(1) for purposes other than domestic processing into finished products will be a violation of this Act, its implementing regulations, and the False Statements Act (18 U.S.C. 1001) and may subject me to the penalties and remedies provided for such violation.''

(2) *Signatory procedures.* Certificates shall be on company letterhead, and signed by the person manufacturing the shipment. In the case of a corporation, the certificate must be signed by a person authorized, in writing, by the Chief Executive Officer, pursuant to 36 CFR 223.187(d)(3), to sign the certificate in 36 CFR 223.187(d)(1) on behalf of the corporation.

(3) *Chief Executive Officer Authorization.* The authorization by the Chief Executive Officer shall be on company letterhead, shall be notarized, and shall read as follows:

''I authorize _____ to sign the certificate in 36 CFR 223.187(d)(1) on behalf of (name of corporation). I make this authorization with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations. I fully understand that exporting unprocessed timber originating from Federal lands or unprocessed timber originating from private lands which is required to be processed domestically is a violation of this Act, its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.''

§ 223.188 Prohibitions against exporting unprocessed Federal timber.

No person who acquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States may export such timber from the United States, or sell, trade, exchange, or otherwise convey such timber to any other person for the purpose of exporting such timber from the United States. This prohibition does not apply to specific quantities of grades and species of such unprocessed Federal timber that the Secretary of Agriculture determines to be surplus to domestic manufacturing needs.

§ 223.189 Prohibitions against substitution.

(a) *Direct substitution prohibition.* Except as otherwise provided by this section:

(1) No person may purchase directly from any department or agency of the United States unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if:

(i) Such person acquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States and engages in exporting or selling for export, unprocessed timber originating from private lands within the same geographic and economic area; or

(ii) Such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands.

(2) No person may export or sell for export, unprocessed timber originating from private lands within the same geographic and economic area in the same calendar year that the person has unprocessed timber originating from Federal lands in the person's possession or under contract.

(3) No person may purchase unprocessed timber originating from Federal lands if such person sells or otherwise transfers unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing, to a third party if that third party or successive parties export that unprocessed private timber. A third party or successive parties who acquire such unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing may not export such timber.

(4) The prohibitions in paragraphs (a)(1)–(3) of this section shall not apply to specific quantities of grades and species of unprocessed timber which the Secretary of Agriculture has determined to be surplus to domestic manufacturing needs.

(b) *Exemptions.* (1) Pursuant to section 490(c) of the Act (16 U.S.C. 620b), all persons who applied for a sourcing area by December 20, 1990, in accordance with § 223.190 of this subpart, were exempt from the prohibitions against substitution, in accordance with § 223.189(a)(1) of this subpart, until such time that the approving official approved or disapproved the application.

(2) Pursuant to Section 490(a) of the Act (16 U.S.C. 620b), an exemption to the prohibition in § 223.189(a)(1)(B) of this subpart is provided to:

(i) A person with a historic export quota who submitted a certification in accordance with § 223.189 (c) and (d) of this subpart; and

(ii) A non-manufacturer who submitted a certification in accordance with § 223.192 of this subpart.

(3) Pursuant to § 490(c) of the Act (16 U.S.C. 620b), the prohibitions against direct substitution in § 223.189(a) (1) and (2) of this subpart do not apply to a person who acquires unprocessed timber originating from Federal lands within an approved sourcing area, does not export unprocessed timber originating from private lands within the approved sourcing area while the approval is in effect, and, if applicable, received a waiver of the prohibition against exporting unprocessed timber originating from private lands within the sourcing area during the preceding 24 months, in accordance with § 223.189 (f) and (g) of this subpart.

(c) *Historic export quota exemption.* The prohibition against the purchase of Federal timber for a person who has exported unprocessed timber originating

from private lands, within the preceding 24-month period, shall not apply to a person with a historic export quota approved by the Secretary and who has been exporting unprocessed private timber in accordance with the log export and substitution regulations of the Secretary of Agriculture at 36 CFR part 223, subpart D, in effect before August 20, 1990, if:

(1) That person certified in writing to the Regional Forester of the Region administering the historic export quota, on or before November 20, 1990, that the person would cease exporting unprocessed timber originating from private lands on or before February 20, 1991, and

(2) The exporting ceased in accordance with such certification.

(d) *Application for historic export quota exemption.* To obtain an exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber based on an approved historic export quota described in paragraph (c) of this section, a person must have applied in writing to the applicable Regional Forester on or before November 20, 1990. The certificate must have been notarized. The application was required to be on company letterhead and must have included:

(1) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area(s) involved in the certification, for a period of three (3) years beginning November 20, 1990, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(2) A signed certification which reads as follows:

''I have purchased, under an historic export quota approved by the Secretary of Agriculture, unprocessed timber originating from Federal lands located west of the 100th meridian in the contiguous 48 States during the preceding 24 months in direct substitution for exported unprocessed timber originating from private lands. I desire to purchase directly from a Department or agency of the United States, unprocessed timber originating from Federal lands located in such area of the United States. I make this certification for the exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber required by the Forest Resources Conservation and Shortage Relief Act of 1990, (Pub. L. No. 101–382, August 20, 1990, 16 U.S.C. 620, *et seq.*) (Act). I hereby certify that I will cease all exporting of such unprocessed private timber from lands west of the 100th meridian in the 48 contiguous States of the United States by February 20, 1991. I make this certification with full knowledge and understanding of the requirements of this Act and do fully understand that failure to cease such exporting as certified will be a violation of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided from such violation.''

(3) The certification must have been signed by the person making such certification or, in the case of a corporation, by its Chief Executive Officer.

(e) *Indirect substitution prohibition.* No person may purchase from any other person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if such person would be prohibited by paragraph (a) of this section from purchasing such timber directly from a Department or agency of the United States, pursuant to § 490(b) of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*). The prohibition in this paragraph does not apply to the following:

(1) To the acquisition of western red cedar, which is domestically processed into finished products.

(2) To a person who acquires unprocessed timber originating from Federal lands within an approved sourcing area, does not export unprocessed timber originating from private lands within the approved sourcing area while the approval is in effect, and, if applicable, receives a waiver of the prohibition against exporting unprocessed timber originating from private lands within the sourcing area during the preceding 24 months in accordance with § 223.189 (f) and (g) of this subpart.

(3) To the limited amount of unprocessed National Forest System timber within Washington State that is exempt from the prohibition against indirect substitution, pursuant to § 223.203.

(f) *Waiver within a sourcing area.* The prohibitions in § 223.189(a) (1) and (2) against direct and indirect acquisition of unprocessed timber originating from Federal lands do not apply if:

(1) A person acquires such timber from within an approved sourcing area located west of the 100th meridian in the 48 contiguous States;

(2) Has not exported unprocessed timber originating from private lands located within the approved sourcing area during the preceding 24 months;

(3) Does not export such private timber from within the approved sourcing area during the period the sourcing area is in effect; and

(4) Does not export such private timber during any calendar year in the same geographic and economic area that unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States is under contract or in possession, if the sourcing area is no longer in effect, pursuant to the definition of substitution in 36 CFR 223.186.

(5) The appropriate Regional Forester could waive, in writing, the prohibition against export within the preceding 24-month period for any person who certified in writing, on or before November 20, 1990, that on or before February 20, 1991, that person would cease exporting unprocessed timber originating from private lands within the approved sourcing area for a period of not less than three (3) years. Signatories of this certificate who received an approved sourcing area, like all holders of sourcing areas, are subject to the prohibition against exporting unprocessed timber originating from private lands within the sourcing area boundaries, pursuant to this paragraph.

(g) *Application for waiver within a sourcing area.* To obtain a waiver of the prohibition against export within the preceding 24-month period for purchasing Federal timber described in paragraph (f) of this section, a person must have submitted a request for waiver, in writing, to the Regional Forester of the region in which the manufacturing facility being sourced is located, which must have been received by the Regional Forester on or before November 20, 1990, and which must have been signed by the person making such request or, in the case of a corporation, by its Chief Executive Officer. The request for waiver must be notarized and, in the case of a corporation, with its corporate seal affixed. The request shall be on company letterhead with its corporate seal affixed and must include:

(1) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area(s) involved in the waiver request, for a period of three (3) years beginning November 20, 1990, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(2) A signed certification statement which reads as follows:

''I have engaged in exporting of unprocessed timber originating from private land located within the sourcing area for which I am applying. I desire to purchase directly from a department or agency of the

United States unprocessed timber originating from Federal lands located within the desired sourcing area. I hereby request waiver of the prohibition against export within the preceding 24-month period for purchasing Federal timber required by the forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101–382, August 20, 1990, 16 U.S.C. 620, *et seq.*) (Act). I hereby certify that I will cease all exporting of such unprocessed private timber from within the desired sourcing area by February 20, 1991, and will not resume such exporting for a period of not less than three (3) years. I make this certification with full knowledge and understanding of the requirements of this Act and do fully understand that failure to cease such exporting as certified will be a violation of Section 492 of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.''

§ 223.190 Sourcing area application procedures.

(a) Subject to the restrictions described in § 223.189 of this subpart and, except as provided in paragraph (b) of this section, a person who owns or operates a manufacturing facility and who exports unprocessed timber originating from private lands may apply for a sourcing area in accordance with the procedures of this section. However, an owner/operator of a manufacturing facility who exports unprocessed timber originating from Federal lands may not possess or acquire unprocessed timber originating from Federal lands unless the acquisition is within an approved sourcing area. A person who intends to acquire or become affiliated with a manufacturing facility that processes Federal timber and who is an exporter may apply for a sourcing area. Written proof of the intent to acquire or affiliate must be included in the sourcing area application, signed by the applicant and the person or, in the case of a corporation, the Chief Executive Officer, whose company the applicant intends to acquire or affiliate with. This certification must be on letterhead and must be notarized. A sourcing area application that the Secretary determines would be approved will be granted tentative approval pending final notification by the applicant of acquisition of or affiliation with the manufacturing facility. The tentative approval of the sourcing area will lapse unless the acquisition or affiliation occurs within 30 days of the tentative approval of the sourcing area. A sourcing area is not valid until final approval of the sourcing area. The direct substitution prohibition did not apply to a person who applied for a sourcing area on or before December 20, 1990. A request for modification of an existing sourcing area shall trigger a review pursuant to the procedures and restrictions in § 223.191(e).

(b) As provided in the Act, a person who has requested an exemption or waiver of the prohibition against export within the preceding 24-month period, pursuant to § 223.189 of this subpart, must have applied for the desired sourcing area on or before December 20, 1990.

(c) *Applications.* Sourcing area applications shall include:

(1) A map of sufficient scale and detail to clearly show:

(i) The applicant's desired sourcing area boundary. This boundary will include both the private and Federal lands from which the applicant intends to acquire unprocessed timber for sourcing its manufacturing facilities;

(ii) The location of the timber manufacturing facilities owned or operated by the applicant within the proposed sourcing area where the person intends to process timber originating from Federal land;

(iii) The location of private lands within and outside the desired sourcing area where the person has, within the 24 months immediately preceding the date of the application, acquired unprocessed timber originating from private land which was exported, sold, traded, exchanged, or otherwise conveyed to another person for the purpose of exporting such timber;

(2) A list of other persons with timber manufacturing facilities located within the same general vicinity as the applicant's facilities;

(3) Any other information the applicant may believe is appropriate to support approval of the requested sourcing area; and

(4) A statement signed by the person certifying under the penalties provided in Section 492 of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001) that the information provided in support of the application is true, complete, and accurate to the best of the applicant's knowledge. The statement shall read as follows:

''I certify under penalties of 16 U.S.C. 620d and 18 U.S.C. 1001, that the information provided in support of this application, is true, complete, and accurate to the best of my knowledge concerning my timber purchasing and export patterns. I certify that the information provided concerning my timber purchasing and export patterns fully and accurately reflects, to the best of my knowledge, the boundaries of the sourcing area for which I am applying. I make this certification with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations. I certify that I have not exported unprocessed timber originating from private lands within the boundaries of the sourcing area that is the subject of this application in the previous 24 months. I fully understand that, if this application is approved, exporting unprocessed private timber originating from within the approved sourcing area will be a violation of this Act (16 U.S.C. 620, *et seq.*) its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.''

(d) *Confidential information.* Applications are not considered confidential. However, if a person does submit confidential information as part of an application, the information should be marked confidential. Information so marked will be afforded the rights and protection provided under the Freedom of Information Act.

(e) *Where to submit the application.* A sourcing area applicant shall send the application to the Office of Administrative Law Judges and shall, simultaneously, send a copy of the sourcing area application to the Forest Service Regional Forester of the region in which the manufacturing facility being sourced is located. Where the sourcing area application will cover purchases from more than one agency, application is to be made to the agency from which the applicant expects to purchase the preponderance of its Federal timber. The sourcing area applicant must also send a complete copy of the application to each agency concerned. The lead agency shall make the decision in consultation with, and upon co-signature of, the other agencies concerned.

(f) *Signatory procedures.* Sourcing area applications must be signed by the person making the request, or in the case of a corporation, by its Chief Executive Officer, and must be notarized. The application shall be on company letterhead.

(g) The sourcing area application and review process will be conducted pursuant to the Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), found at 7 CFR part 1, subpart M.

(h) A final decision on a sourcing area application or a formal sourcing area review will be issued within four (4) months of the receipt of the application or initiation of the review.

(i) The following criteria must be met for sourcing area approval:

(1) The Administrative Law Judge, or, on appeal, the Judicial Officer must find that the proposed sourcing area is

geographically and economically separate from any area that the applicant harvests or expects to harvest for export any unprocessed timber originating from private lands. In making such a finding, the Administrative Law Judge, or, on appeal, the Judicial Officer shall consider the timber purchasing patterns of the applicant on private and Federal lands equally with those of other persons in the same local vicinity and the relative similarity of such purchasing patterns.

(2) The ''same local vicinity'' will normally be manufacturing facilities located within 30 miles of the community where the applicant's manufacturing facility is located, but may include more distant communities if manufacturing facilities in those communities depend on the same source of timber and have similar purchasing patterns.

(3) The relative similarity of purchasing patterns of other mills shall be determined by considering the location and similarity of unprocessed timber being acquired by those facilities.

(4) Lines defining the geographic area shall be based on major natural and cultural features, including, but not limited to, prominent ridge systems, main roads or highways, rivers, political subdivisions, and not characterized by random lines.

(j) *Comments.* Persons may submit comments on sourcing area applications pursuant to the Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, et seq.), found at 7 CFR part 1, subpart M. Persons submitting a comment must certify at the end of the comment, but before the signature, to the following: ''I certify that the information provided by me is true and accurate, to the best of my knowledge, and I understand that failure to provide true and accurate information could be violation of the False Statements Act (18 U.S.C. 1001).''

(k) Transporting or causing to be transported unprocessed private timber from outside of a sourcing area into a sourcing area by the holder of the sourcing area is prohibited as a violation of the sourcing area boundary. Such violation will cause a review of the sourcing area, and could subject the sourcing area holder to the penalties and remedies for violations of the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620, *et seq.*, and its implementing regulations.

(1) A person with an approved sourcing area may relinquish the sourcing area at any time provided the person certifies to the following:

''I am relinquishing the approved sourcing area, described in the Secretary's determination in FSAA _____ on _____, 19____. I understand that I may not export unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States during the fiscal year in which I have unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States in my possession or under contract, pursuant to the prohibition against substitution in the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (''Act'') and its implementing regulations. I also understand that I may not purchase unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States within 24 months of having exported unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States, pursuant to the prohibitions against substitution in the Act and its implementing regulations. I make this certification with full knowledge and understanding of the Act and its implementing regulations and do fully understand that exporting unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States during a fiscal year in which I have unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States in possession or under contract, or purchasing unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States within 24 months of having exported unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States is a violation of the substitution provisions of the Act and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.''

The certificate must be signed by the person making such certification or, in the case of a corporation, by its Chief Executive Officer; must be on company letterhead; and must be notarized.

(m) A sourcing area is in effect until it is relinquished by the sourcing area holder, or is disapproved upon review of the sourcing area.

§ 223.191 Sourcing area disapproval and review procedures.

(a) Notwithstanding any other provision of law, an applicant whose sourcing area application was submitted by December 20, 1990, and was disapproved could either phase out of purchasing Federal timber or phase out of exporting unprocessed timber originating from private lands within the sourcing area that would have been approved, as follows:

(1) *Phase-out of Federal timber purchasing.* The applicant could purchase, in the 9-month period after receiving the application disapproval, unprocessed timber originating from Federal lands in the disapproved sourcing area, in an amount not to exceed 75 percent of the annual average of such person's purchases of unprocessed Federal timber in such area during the 5 full fiscal years immediately prior to the date of submission of the application. In the 6-month period immediately following the 9-month period, such person could purchase not more than 25 percent of such annual average, after which time the prohibitions against direct substitution, set forth in § 223.189 of this subpart, shall apply; or

(2) *Phase-out of private timber exporting.* The applicant could continue to purchase unprocessed timber originating from Federal lands within the disapproved sourcing area without being subject to the phase-out of Federal timber purchasing procedures described in paragraph (a) of this section, if the following requirements were met:

(i) The applicant certified to the Regional Forester or the approving official to whom such authority has been delegated, within 90 days after receiving the disapproval decision, as follows:

(A) An applicant that has exported unprocessed timber originating from private lands from the geographic area that would have been approved provided a signed certification that reads as follows:

''I have engaged in the exporting of unprocessed private timber originating from private lands located within the geographic area the approving official would have approved as a sourcing area for my manufacturing facility. I desire to continue purchasing unprocessed Federal timber from within such area. I hereby certify that I will cease all exporting of unprocessed timber from private lands located within the area that would have been approved by [the applicant shall insert date 15 months from date of receipt of the disapproval decision]. I agree to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area involved in the certification, for a period of three (3) years beginning on the date of receipt of the disapproval notification, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated. I make this certification with full knowledge and understanding of the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and do fully understand that failure to cease such exporting as certified will be a violation of the Act and may subject me to the penalties and remedies for such violation. Further, I fully understand that such violation may subject me to the penalty of perjury pursuant to the False Statements Act (18 U.S.C. 1001).

I certify that the information in this certificate is true, complete, and accurate to the best of my knowledge and belief.'';

or,

(B) An applicant who has not exported unprocessed timber originating from private lands from the geographic area that the Secretary would have approved provided a signed certification that reads as follows:

''I have not exported timber originating from private lands within both the sourcing area that the Secretary would have approved and the disapproved sourcing area in the past 24 months, pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), and I am accepting the area that the Secretary would have approved as my sourcing area. I certify that the information in this certificate is true, complete, and accurate to the best of my knowledge and belief.''

(ii) Each certification statement set forth in paragraph (a)(2)(i) of this section must have been signed by the person making such certification or, in the case of a corporation, by its Chief Executive Officer; must have been on company letterhead; must have been notarized; and must have had a corporate seal attached.

(iii) The person signing such certification set forth in paragraph (a)(2)(i)(A) of this section must have provided to the Regional Forester the annual volume of timber exported by that person during the five (5) full fiscal years immediately preceding submission of the application, originating from private lands in the geographic area for which the application would have been approved.

(iv) When the applicant submitted the certificate, the area the Secretary would have approved, as shown on the sourcing area map provided by the Secretary, became an approved sourcing area. If the certificate was not submitted, the sourcing area that would have been approved did not become an approved sourcing area.

(3) The phase-out of Federal timber purchasing and the phase-out of private timber exporting procedures provided by paragraphs (a)(1) and (a)(2) of this section do not apply to persons submitting sourcing area applications after December 20, 1990, or to persons requesting review of disapproved sourcing areas.

(b) *Limits on purchases and exports.* (1) During the 15-month period following disapproval of a sourcing area, a person who elects to phase-out of private timber exporting as described in paragraph (a)(2) of this section, may not:

(i) Purchase more than 125 percent of the person's annual average purchases of unprocessed timber originating from Federal lands within the person's disapproved sourcing area during the five (5) full fiscal years immediately prior to submission of the application; and,

(ii) Export unprocessed timber originating from private lands in the geographic area determined by the approving official for which the application would have been approved, in amounts that exceed 125 percent of the annual average of that person's exports of unprocessed timber from such private land during the five (5) full years immediately prior to submission of the application.

(2) At the conclusion of the 15-month export phase-out period, the prohibition against exporting private timber originating from within the area shall be in full force and effect as long as the sourcing area remains approved, pursuant to this subpart F of this part 223.

(c) *Presentation of map to applicant whose sourcing area is disapproved.* The area determined by the deciding official that would have been approved shall be drawn on a map and presented to the applicant by the deciding official with the notice of disapproval of the application.

(d) *Effect of prior certification to cease exporting.* An applicant's previous certification to cease exporting beginning February 20, 1991, for a period of three (3) years from within the disapproved sourcing area pursuant to paragraphs (f) and (g) in § 223.189 of this subpart shall remain in full force and effect for persons with approved and disapproved sourcing areas.

(e) *Review process and frequency.* (1) Approved sourcing areas shall be reviewed not less often than every five (5) years. A tentative date for a review shall be included in the Administrative Law Judge's, or, on appeal, the Judicial Officer's determination or stated in writing by the Regional Forester following the determination. At least 60 days prior to the tentative review date, the Regional Forester or other such reviewing official shall notify the person holding the sourcing area of the pending review, publish notice of such review in newspapers of general circulation within the sourcing area, and invite comments, to be received no later than 30 days from the date of the notice, from all interested persons, including the person holding the sourcing area. For 10 working days following the comment period, any person submitting a written comment and the person with the sourcing area may review the comments. If there is disagreement among the persons who submitted written comments regarding the proper sourcing area, the reviewing official shall convene an informal meeting convenient to the persons that all interested persons may attend. If an agreement cannot be reached among the persons, formal administrative adjudication shall occur. The Administrative Law Judge, or, on appeal, the Judicial Officer shall, on the record and after opportunity for a hearing, approve or disapprove the sourcing area being reviewed, pursuant to the Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), found at 7 CFR part 1, subpart M.

(2) Disapproved sourcing areas shall be reviewed using the process described in paragraph (e)(1) of this section upon resubmission of an application, provided the applicant has accepted the area the Secretary would have approved as a sourcing area pursuant to paragraph (a)(2) of this section.

(3) The Department reserves the right to schedule a review, at the request of the Forest Service or the person holding the sourcing area, at any time prior to the scheduled tentative review date, with 60 days notice.

(4) Sourcing areas being reviewed shall continue in full force and effect pending the final review determination.

(f) *Reporting and record keeping procedures.* The reporting and record keeping procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596–0115.

§ 223.192 Procedures for a non-manufacturer.

(a) Persons who do not own or operate a manufacturing facility (non-manufacturer) are not eligible to apply for or be granted a sourcing area.

(b) The prohibition against the purchase of Federal timber for a person who has exported unprocessed timber originating from private lands within the preceding 24-month period shall not apply, if the person certified in writing to the Regional Forester of the region(s) in which the person purchases National Forest System timber by November 20, 1990, that the person would cease exporting unprocessed timber originating from private lands by February 20, 1991, for a period of three (3) years, and the exporting did cease in accordance with such certification.

(c) To obtain an exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber described in § 223.189 (a) and (b) of this subpart, a person must have applied in writing to the applicable Regional Forester on or before November 20, 1990. The application was required to be on company letterhead and, in the case of a corporation, with its corporate seal affixed, and must have included:

(1) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area(s) involved in the certification, for a period of three (3) years beginning November 20, 1990, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(2) A signed certification which reads as follows:

''I have engaged in the exporting of unprocessed timber originating from private lands located west of the 100th meridian in the contiguous 48 States during the preceding 24 months. I desire to purchase directly from a department or agency of the United States, unprocessed timber originating from Federal lands located in such area of the United States. I make this certification for the exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber required by the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101–382, August 20, 1990, 16 U.S.C. 620, *et seq.*) (Act). I hereby certify that I will cease all exporting of such unprocessed private timber from west of the 100th meridian in the contiguous 48 States of the United States by February 20, 1991. I make this certification with full knowledge and understanding of the requirements of this Act and do fully understand that failure to cease such exporting as certified will be a violation of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.''

(3) The certification must have been signed by the person making such certification or, in the case of a corporation, by its Chief Executive Officer. The certificate must have been notarized.

§ 223.193 Procedures for reporting acquisition and disposition of unprocessed Federal timber.

(a) *Annual report.* Each person who directly or indirectly acquires or possesses unprocessed timber originating from National Forest System lands located west of the 100th meridian in the 48 contiguous States shall submit an annual report on a form provided by the Forest Service on the acquisition and disposition of such timber. Such report shall be on a calendar year basis and shall be sent to the Regional Forester, or other official to whom such authority is delegated, who administers the National Forest System lands from which the majority of timber originated, not later than March 1 of each year, beginning March 1, 1997. The form shall include:

(1) A summary for the calendar year listing, by company, from whom the timber was acquired; the date of acquisition; the origin of National Forest System timber acquired; the sale name; the contract number(s); brand registration number(s) of brands registered by a state or agency or a pictorial representation of sale brand(s) if brands not registered by a state or agency; to whom the timber was sold, transferred or otherwise conveyed to another person; and the date of disposal;

(2) An accounting by origin, in net board feet Scribner or cubic feet, of the volume of National Forest System timber acquired, the volume domestically processed by the purchaser or affiliates, and the volume sold or transferred for domestic processing;

(3) The volume by species of National Forest System surplus species timber acquired and exported or sold for export;

(4) The volume (MBF Net Scribner or cubic) of the unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States that was exported, and

(5) A certificate stating that:

(i) The certifier has read and understands the form;

(ii) The certifier is eligible to acquire unprocessed timber originating from Federal lands in accordance with the Act;

(iii) The information supplied is a true, accurate, current, and complete statement of the receipt and disposition of unprocessed timber originating from National Forest System lands to the best of the certifier's knowledge;

(iv) The certifier agrees to retain a copy of the form and records of all transactions involving unprocessed Federal timber and to make such records available for inspection upon request of an authorized official of the United States for three (3) years from the date of disposal by manufacture or transfer; and

(v) The certifier acknowledges that failure to report completely and accurately the receipt and disposition of timber will subject the certifier to the penalties and remedies in the Act and the penalties in the False Statements Act (18 U.S.C. 1001).

(6) The information provided is presumed to be not confidential, unless specifically marked confidential, in which case confidentiality will be evaluated under applicable laws.

(b) *Transfer of unprocessed National Forest System timber.* Each person who transfers to another person unprocessed timber originating from National Forest System lands shall undertake the following:

(1) Before completing such transfer, provide to such other person a written notice of origin, species, estimated volume or actual volume if the transfer is based on log scale volume, from whom acquired, sale name, contract number, and log brand of unprocessed National Forest System timber being transferred on a form provided by the Forest Service;

(2) Before completing such transfer, certify that the information supplied is a true, accurate, current, and complete statement to the best of his or her knowledge. As part of the certification, the certifier shall:

(i) Agree to send a signed copy of the form required in paragraph (b)(1) of this section within 10 calendar days of such transfer, which shall include all notices, acknowledgments, and agreements, required by this section, to the appropriate Regional Forester who administers the National Forest System lands from which this timber originates, or other official to whom such authority is delegated, and to retain a copy for the certifier's records;

(ii) Acknowledge that the transfer of unprocessed Federal timber to a person for export or to a person who may not purchase timber directly from the Federal government is a violation of the Act;

(iii) Agree to obtain full completed notice of origin form from the transferee;

(iv) Agree to retain records of all transactions involving unprocessed Federal timber for a period of three (3) years from the date of transfer and to make all records involving log transactions available to an appropriate Federal official upon request. Records include all forms and certificates required by these regulations;

(v) Acknowledge that failure to report completely and accurately the receipt and disposition and/or transfer of unprocessed National Forest System timber will subject the certifier to the penalties and remedies in the Act (16 U.S.C. 620, *et seq.*) and the penalties in the False Statements Act (18 U.S.C. 1001); and

(vi) Certify that he or she has read and understands the form.

(3) Before completing such transfer, obtain from the person acquiring such

timber on the same form provided by the Forest Service.

(i) An agreement to retain for a period of three (3) years from date of transfer the records of all sales, exchanges, or other disposition of such timber, and make such records available for inspection upon the request of an authorized official of the United States;

(ii) An agreement to allow Federal officials access to log storage and processing facilities for the purpose of monitoring compliance with the Act and implementing regulations;

(iii) An agreement to maintain and/or replace all brands and paint identifying the Federal origin of each piece of unprocessed Federal timber as described in § 223.195;

(iv) An agreement to submit, by March 1, the annual report required in § 223.193(a);

(v) An agreement to submit a completed notice of origin form for the Federal timber received and to receive an agreement to comply with the Act and regulations in such form if the person transfers any or all of the timber listed in the document;

(vi) An acknowledgment of the prohibition against acquiring unprocessed Federal timber from a person who is prohibited by the Act from purchasing the timber directly from the United States;

(vii) An acknowledgment of the prohibitions against exporting unprocessed Federal timber and against acquiring such timber in substitution for unprocessed private timber west of the 100th meridian in the contiguous 48 States;

(viii) A declaration of its business size and manufacturing classification, as defined under the Small Business Administration Regulations at 13 CFR part 121; and

(ix) A certificate stating that the certifier has read and understands the form; is eligible to acquire unprocessed timber originating from Federal lands in accordance with the Act; has been notified that some or all of the unprocessed timber included in this transfer is subject to export and substitution restrictions; supplied information is a true, accurate, current, and complete statement of the receipt and disposition of the unprocessed timber originating from National Forest System lands to the best of the certifier's knowledge; and acknowledges that failure to report completely and accurately the transfer of unprocessed Federal timber will subject the certifier to the penalties and remedies in the Act (16 U.S.C. 620, *et seq.*) and the penalties in the False Statements Act (18 U.S.C. 1001). The information provided is presumed to be not confidential, unless specifically marked confidential, in which case confidentiality will be evaluated under applicable laws.

(4) Except as otherwise provided by law, a person who transfers unprocessed Federal timber to another person and meets all notice, certification, acknowledgment, reporting and record keeping requirements contained in this section shall be relieved from further liability for such timber pursuant to the Act.

§ 223.194 Procedures for reporting the acquisition and disposition of unprocessed private timber.

(a) *Notice of domestic processing requirement.* Each person who acquires unprocessed timber originating from Federal lands located west of the 100th meridian in the 48 contiguous States, and who also possesses or acquires unprocessed timber from private lands located west of the 100th meridian in the 48 contiguous States that requires domestic processing, including unprocessed timber originating within an approved sourcing area, and in turn sells, trades or otherwise conveys such unprocessed private timber to another person, must include a statement notifying the person acquiring the unprocessed private timber that such private timber must be domestically processed. Unprocessed timber originating from private lands located outside of a sourcing area may be transferred by the holder of the sourcing area, or by persons acquiring such unprocessed timber who are eligible to export such timber, without including such a statement.

(b) The notification statement, pursuant to paragraph (a) of this section, shall accompany each transaction involving unprocessed private timber that requires domestic processing. The statement shall be on a form provided by the Forest Service or a legible copy of such form.

(1) On such form, described in paragraph (b) of this section, the person transferring the timber shall:

(i) Give notice to the person receiving the unprocessed private timber that exporting that timber would violate the Act and its implementing regulations;

(ii) Give notice to the person receiving the unprocessed private timber that the timber has been identified for domestic manufacturing by a spot of highway yellow paint on each log end that must be retained on the timber;

(iii) Agree to send a signed copy of the transaction statement to the Regional Forester within 10 calendar days of the transaction;

(iv) Agree to retain records of all transactions involving the acquisition and disposition of unprocessed timber for a period of three (3) years from the date of disposal by manufacturing or transfer and to make such records available for inspection upon the request of an authorized official of the United States;

(v) Acknowledge that failure to completely and accurately report and identify unprocessed timber is a violation of the Act, and regulations issued under the Act, and the False Statements Act (18 U.S.C. 1001); and

(vi) Certify that the form has been read and understood.

(2) On such form, described in paragraph (b), the person acquiring the timber shall:

(i) Acknowledge receipt of the notice of requirement to domestically process timber originating from private land;

(ii) Certify that a statement pursuant to paragraph (b)(1) will be included in any subsequent transaction documents;

(iii) Agree to maintain yellow paint markings on each log end until the timber is domestically processed or transferred;

(iv) Agree to retain records of all transactions involving the acquisition and disposition of unprocessed timber for a period of three (3) years from the date of disposal by manufacturing or transfer and to make such records available for inspection upon the request of an authorized official of the United States;

(v) Agree to send a signed copy of the transaction statement to the Regional Forester within 10 calendar days of the transaction;

(vi) Agree to allow authorized officials access to log storage and processing facilities for the purpose of monitoring compliance with the Act and its implementing regulations;

(vii) Acknowledge that failure to comply with the domestic manufacturing requirements for unprocessed timber or failure to notify subsequent persons of this requirement may subject the certifier to the civil penalties and administrative remedies provided in the Act and regulations issued under the Act;

(viii) Acknowledge that failure to completely and accurately report and identify unprocessed timber is a violation of the Act, and regulations issued under the Act, and the False Statements Act (18 U.S.C. 1001); and

(ix) Certify that the form has been read and understood.

(c) Except as otherwise provided by law, a person who transfers unprocessed private timber to another person and meets all notice, certification,

acknowledgement, distribution, reporting and record keeping requirements contained in this section shall be relieved from further liability for such timber with regard to the export and substitution restrictions pursuant to the Act.

§ 223.195 Procedures for identifying and marking unprocessed timber.

(a) *Highway yellow paint.* The use of highway yellow paint on unprocessed logs west of the 100th meridian in the contiguous 48 States shall be reserved for identifying logs requiring domestic manufacturing.

(b) *Preserving identification.* All identifying marks placed on an unprocessed log to identify the National Forest System origin of that log and/or to identify the log as requiring domestic processing shall be retained on the log until the log is domestically processed. If the identifying marks are lost, removed, or become unreadable, they shall be replaced. If the log is cut into two or more segments, each segment shall be identified in the same manner as the original log.

(1) A generic log hammer brand, known as a ''catch brand'', used to identify ownership, may be used to replace lost, removed, unreadable or otherwise missing brands where such use is authorized by the Regional Forester and approved by the Contracting Officer. Use of such a catch brand on a log or log segment will signify Federal origin.

(2) The requirement to preserve identification of log pieces shall not apply to logs cut into two or more segments as a part of the mill in-feed process immediately before processing. Log segments that are returned to or placed in storage must be marked on both ends with yellow paint.

(c) *National Forest System logs.* Except as otherwise provided in this subsection, all unprocessed logs originating from National Forest System timber sales west of the 100th meridian in the contiguous 48 States shall, before being removed from the timber sale area, be marked on each end as follows:

(1) Painted on each end with a spot of highway yellow paint not less than three square inches in size; and,

(2) Branded on each end with a hammer brand approved for use by the Forest Supervisor of the National Forest from which the logs originate. The brand pattern may not be used to mark logs from any other source for a period of 24 months after all logs have been removed from the sale area and until such brand pattern is released in writing by the Forest Supervisor.

(d) *Private logs.* All unprocessed logs originating from private lands west of the 100th meridian in the contiguous 48 States that require domestic manufacturing pursuant to § 223.194 of this subpart, shall be painted on each end with a spot of highway yellow paint not less than three (3) square inches in size before removal from the harvest area. If private logs are acquired by a person who may not export such logs, the logs must be marked by the person acquiring the logs at the time of the acquisition.

(e) *Waiver of painting requirements.* The log painting requirements pursuant to paragraphs (c)(1) and (d) of this section may be waived if the Chief of the Forest Service determines that alternate methods for identifying logs required to be domestically processed are equal to or better than the procedures required herein.

(f) *Waiver of branding requirements.* Regional Foresters may waive the branding requirements pursuant to paragraph (c)(2) of this section as follows:

(1) *Regions 1, 2, 3, and 4.* On an individual timber sale basis, all or a portion of the branding requirements pursuant to paragraph (c)(2) of this section may be waived, if:

(i) Unprocessed logs from any origin are not known to have been exported by any person from the person's area of operations within the previous 5; years.

(ii) The person certifies as follows:

''I hereby request waiver of the requirements to brand each end of individual logs originating from the _____ timber sale, Forest Service contract number _____ pursuant to 36 CFR 223.195. I certify that I have not exported or sold for export unprocessed timber from private lands within my area of operations in five years. I certify that I understand, that if granted, the waiver applies only to unprocessed logs being processed within my area of operations. I certify that any unprocessed logs to which this waiver applies that are transferred, or sold for transfer, outside my area of operations will be branded on both ends in full compliance with 36 CFR 223.195. I make this certification with full knowledge and understanding of the requirement of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations at 36 CFR part 223. I fully understand that failure to abide by the terms of the waiver will be a violation of this Act (16 U.S.C. 620, *et seq.*) and the False Statements Act (18 U.S.C. 1001) and may subject me to the penalties and remedies provided for such violation.'';

and,

(iii) The person otherwise complies with the regulations relating to transfers of logs between persons.

(iv) If the Regional Forester determines that unprocessed logs from my origin are being exported, or are known to have been exported within the previous 5 years, by any person from the person's area of operations, the Regional Forester shall revoke the waiver.

(2) *Regions 5 and 6.* On an individual timber sale basis, the branding requirement pursuant to paragraph (c)(2) of this section may be waived for logs ten (10) inches or less in diameter inside bark on the large end may be waived if:

(i) One end of each log is branded;

(ii) The person certifies as follows:

''I hereby request waiver of the requirement to brand each end of individual logs ten (10) inches or less in diameter inside bark on the large end, originating from the _____ timber sale, U.S. contract number _____ pursuant to 36 CFR 223.195. I certify that I understand, if granted, that the waiver applies only to unprocessed logs being processed at _____, and further certify that any and all unprocessed logs to which waiver would apply that are transferred, or sold for transfer, will be branded on both ends in full compliance 36 CFR 223.195. I make this certification with full knowledge and understanding of the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101–382, August 20, 1990; 16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations at 36 CFR Part 223. I fully understand that failure to abide by the terms of the waiver will be a violation of this Act (16 U.S.C. 620, *et seq.*) and the False Statements Act (18 U.S.C. 1001) and may subject me to the penalties and remedies provided for such violation.'';

and,

(iii) The purchaser otherwise complies with the regulations relating to transfers of logs between persons.

(iv) If the Regional Forester determines that logs ten (10) inches or less in diameter inside bark on the large end are being exported in the Region, the Regional Forester shall revoke the waiver.

(3) The Chief of the Forest Service may authorize the testing of alternative methods of branding for consideration in future amendment of these regulations. Such alternative methods and logs marked under those methods shall be closely monitored.

§ 223.196 Civil penalties for violation

(a) *Exporting Federal timber.* If the Secretary of Agriculture finds, on the record and after providing an opportunity for a hearing, that a person, with willful disregard for the prohibition in the Act exporting unprocessed Federal timber, exported or caused to be exported unprocessed timber originating from Federal lands in

violation of the Act, the Secretary may assess against such person a civil penalty of not more than $500,000 for each violation, or 3 times the gross value of the unprocessed timber involved in the violation, whichever amount is greater.

(b) *Other violations.* If the Secretary of Agriculture finds, on the record and after providing an opportunity for a hearing, that a person has violated any provision of the Act, or any regulation issued under the Act relating to National Forest System lands, even though that the violation may not have caused the export of unprocessed Federal timber in violation of such Act, the Secretary may:

(1) Assess against such person a civil penalty of not more than $500,000, if the Secretary determines that the person committed such violation willfully;

(2) Assess against such person a civil penalty of not more than $75,000 for each violation, if the Secretary determines that the person committeed such violation in disregard of such provision or regulation; or

(3) Assess against such person a civil penalty of not more than $50,000 for each violation, if the Secretary determines that the person should have known that the action constituted a violation.

(c) *Penalties not exclusive and judicial review.* A penalty assessed under paragraph (a) or (b) of this section shall not be exclusive of any other penalty provided by law, and shall be subject to review in an appropriate United States district court.

§ 223.197 Civil penalty assessment procedures.

Adjudicatory procedures for hearing alleged violations of this Act and its implementing regulations and assessing penalties shall be conducted under the rules of practice governing formal adjudicatory proceedings instituted by the Secretary. Such procedures are found at 7 CFR 1.130, *et seq.*

§ 223.198 Administrative remedies.

In addition to possible debarment action provided under subpart C of this part, the Chief of the Forest Service, or other official to whom such authority is delegated, may cancel any timber sale contract entered into with a person found to have violated the Act or regulations issued under the Act. Such a finding shall constitute a serious violation of contract terms pursuant to § 223.116(a)(1) of this part.

§ 223.199 Procedures for cooperating with other agencies.

The Regional Foresters may enter into agreements to cooperate with the Department of the Interior, the Department of Defense, and other Federal, State and local agencies for monitoring, surveillance and enforcing the Act.

§ 223.200 Determinations of surplus species.

(a) Determinations that specific quantities of grades and species are surplus to domestic manufacturing needs and withdrawals of such determinations shall be made in accordance with title 5, United States Code, section 553.

(b) Review of a determination shall be made at least once in every 3-year period. Notice of such review shall be published in the **Federal Register**. The public shall have no less than 30 days to submit comments on the review.

(c) Alaska yellow cedar and Port Orford cedar, which the Secretary of Agriculture found to be surplus to domestic processing needs pursuant to 36 CFR 223.163, the rules in effect before August 20, 1990, shall continue in that status until new determinations are published.

§ 223.201 Limitations on unprocessed timber harvested in Alaska.

Unprocessed timber from National Forest System lands in Alaska may not be exported from the United States or shipped to other States without prior approval of the Regional Forester. This requirement is necessary to ensure the development and continued existence of adequate wood processing capacity in Alaska for the sustained utilization of timber from the National Forests which are geographically isolated from other processing facilities. In determining whether consent will be given for the export of timber, consideration will be given to, among other things, whether such export will:

(a) Permit more complete utilization on areas being logged primarily for local manufacture,

(b) Prevent loss or serious deterioration of logs unsalable locally because of an unforeseen loss of market,

(c) Permit the salvage of timber damaged by wind, insects, fire or other catastrophe,

(d) Bring into use a minor species of little importance to local industrial development, or

(e) Provide material required to meet urgent and unusual needs of the Nation. (16 U.S.C. 472a; 16 U.S.C. 551; 16 U.S.C. 616)

§ 223.202 Information requirements.

(a) The procedures in § § 223.189 and 223.192, and some of the procedures in § 223.190 were approved by the Office of Management and Budget (OMB) and assigned Control Number 0596–0114 upon issuance of the interim rule. Control Number 0596–0114 has been reapproved by OMB for use through May 31, 1997. OMB approved the information collection requirements in § § 223.191 and 223.203 for use through August 31, 1995, and assigned them Control Number 0596–0115. OMB approved the information collection requirements in § § 223.48 and 223.87 for use through March 31, 1997 and assigned them Control Number 0596–0021; the information collection requirements in § § 223.48 and 223.87 have been revised. OMB Control Numbers 0596–0114, 0596–0115, and 0596–0021 have been consolidated under OMB Control Number 0596–0114.

(b) The application and reporting procedures in § § 223.187, 223.193, 223.194, 223.195, and some of the procedures in § 223.190 of this final rule contain new record keeping and reporting requirements as defined in 5 CFR part 1320 and, therefore, impose additional paperwork burdens on the affected public. The Office of Management and Budget (OMB) has approved these requirements, and assigned them Control Number 0596–0114.

§ 223.203 Indirect substitution exception for National Forest System timber from within Washington State.

(a) *Exception limits.* A limited amount of unprocessed National Forest System timber originating from within Washington State could have been acquired by a person otherwise covered by the prohibition against indirect substitution, pursuant to § 490(b) of the Act and § 223.189(e) of this subpart.

(1) The amount of such unprocessed timber was limited to whichever is less:

(i) The higher of the applicant's actual purchase receipts for unprocessed timber originating from National Forest System lands within Washington State or the Department's records, during fiscal years 1988, 1989, and 1990, divided by 3; or

(ii) 15 million board feet.

(2) Such limit shall not exceed such person's proportionate share of 50 million board feet.

(b) *Application, review and approval process.* To obtain a share of the 50 million board feet exempted from the prohibition against indirect substitution in section 490(b) of the Act, a person must have submitted an application. Applications were required to include at least the following:

(1) The amount of volume exception being requested, in thousand board feet (MBF);

(2) A signed certification that reads as follows:

''I certify that, except for an approved share of unprocessed Federal timber, in accordance with 36 CFR 223.203, the prohibition contained in section 490(b) of the Act (16 U.S.C. 620b) applies to me. I have exported unprocessed timber originating from private lands from west of the 100th meridian in the 48 contiguous States and have acquired unprocessed timber from National Forest System lands located within Washington State in 1988, 1989 and/or 1990. I certify that the information provided in support of this application is a true, accurate, current and complete statement, to the best of my knowledge and belief. I agree to retain records of all transactions involving the acquisition and disposition of unprocessed timber from Federal lands within the area involved in this application for a period of 3 years beginning on the date the application is approved, and to make such records available for inspection upon the request of the Regional Forester or other official to whom such authority has been delegated. I make this certification with full knowledge and understanding of the requirements of the Act and do fully understand that if this application is approved, the amount of exception granted under this approval may not be exceeded in any one fiscal year, and do fully understand that if such exception is exceeded I will be in violation of the Act (16 U.S.C. 620, *et seq.*), and I may be subject to the penalties and remedies provided for such violation. Further, I do fully understand that such violation may subject me to the penalty of perjury pursuant to the False Statements Act (18 U.S.C. 1001).'';

and

(3) The application listed under this section must have been signed by the person making such application or, in the case of a corporation, by its Chief Executive Officer. The application must have been on the company's letterhead and must have been notarized.

(4) The application made under this section must have been mailed to the Regional Forester in Portland, Oregon, no later than January 8, 1992. Applicants were notified of the approving official's decision by letter. If approved, the amount of the exception becomes effective upon publication in the **Federal Register.**

(5) Prospective applicants could review Department records upon request prior to the deadline for submitting applications. An applicant could voluntarily submit information documenting the amount of purchases of unprocessed timber originating from National Forest System lands within Washington State. The Department then determined which amount is higher, verified by either the Department's records or the applicant's records. The Department then determined the applicant's portion of the 50 million board feet by determining the lesser of the amount verified by the records or 15 million board feet. Applicants could submit the information documenting the amount of purchases in the following manner:

(i) Actual receipts for purchasing unprocessed timber from National Forest System lands within Washington State; or

(ii) A statement by a certified public accountant of:

(A) A summary by fiscal year for 1988, 1989 and 1990 of the applicant's acquisitions of timber originating from National Forest System lands in the State of Washington, listing total volume for each of the three fiscal years; and

(B) The average volume for the three fiscal years. The volumes to be reported were the harvest volumes, except in the case of open sales. Advertised volumes had to be reported for open sales.

(C) The certified public accountant must have certified to the following:

''I certify that under the penalties and remedies provided in § 492 of the Act (16 U.S.C. 620d) and the penalty of perjury provided in the False Statements Act (18 U.S.C. 1001) that the information provided in support of this application is, to the best of my knowledge and belief, a true, accurate, current, and complete statement of [applicant's company's name] National Forest System timber acquisitions originating from within the State of Washington for fiscal years 1988, 1989 and/or 1990.''

(D) The certified public accountant's statement and certification must have been on the accountant's company letterhead, must have been notarized, and must have accompanied the applicant's application.

(c) *Selling and trading rights.* The purchase limit right obtained under this rule may be sold, traded, or otherwise exchanged with any other person subject to the following conditions:

(1) Such rights may not be sold, traded, or otherwise exchanged to persons already in possession of such rights:

(2) Any person selling, trading, or exchanging any or all of the rights obtained under this rule shall advise the Regional Forester of the amount being traded and the name(s) of the person(s) acquiring such rights within 15 days of the transaction; and

(3) No person may have or acquire more than 15 million board feet in one fiscal year.

(d) *Information collection.* The application procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596–0114.

(e) *Persons with approved shares.* The application period for shares of the indirect substitution exception for acquiring unprocessed timber originating from National Forest Systems lands within the State of Washington closed on January 8, 1992. Persons with approved shares are responsible for monitoring and controlling their acquisitions of National Forest System timber originating from within the State of Washington to assure approved share amounts are not exceeded in any Federal fiscal year. Unused portions of annual shares may not be ''banked'' for use in future fiscal years. The acquisition of such National Forest System timber must be reported to the Forest Service in accordance with § 223.193 of this subpart. The following shares are approved as of September 8, 1995:

(1) Cavenham Forest Industries, Portland, OR, 1,048,000 board feet.

(2) Weyerhauser, Tacoma, WA, 15,000,000 board feet.

PART 261—PROHIBITIONS

13. The authority citation for part 261 is revised to read as follows:

Authority: 16 U.S.C. 551; 16 U.S.C. 472; 7 U.S.C. 1011(f); 16 U.S.C. 1246(i); 16 U.S.C. 1133(C)–(d)(1); 16 U.S.C. 620(f).

Subpart A—General Prohibitions

14. Amend § 261.6 by adding paragraph (i) to read as follows:

§ 261.6 Timber and other forest products.

* * * * *

(i) Violating the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), or its implementing regulations at 36 CFR 223.185–223.203.

* * * * *

Dated: August 28, 1995.

James R. Lyons,

Under Secretary, Natural Resources and Environment.

[FR Doc. 95–21912 Filed 9–7–95; 8:45 am]

BILLING CODE 3410–11–M

federal register

Friday
September 8, 1995

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 672 et al.

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Consolidate Recordkeeping and Reporting Requirements; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 950727194–5194–01; I.D. 062795C]

RIN 0648–AG54

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Consolidate Recordkeeping and Reporting Requirements

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to remove and to consolidate several sections of regulations in parts 672 and 675; to simplify and streamline the remaining regulations, including the recordkeeping and reporting requirements; to consolidate area descriptions and coordinates into maps and tables; to consolidate codes, values, and descriptions into tables; and to correct errors and clarify vague text. These actions are intended to facilitate management of the groundfish fisheries and the enforcement of groundfish regulations. They are necessary to promote the goals and objectives of the Fishery Management Plans (FMPs) for Groundfish of the Gulf of Alaska (GOA) and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI).

DATES: Comments must be received on or before October 10, 1995.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or be delivered to Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK. Comments on the collection-of-information requirements may be sent to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) (0648–AG54), Washington, DC 20503 (Attn: NOAA Desk Officer), and to Patsy A. Bearden, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone (EEZ) of the BSAI and the GOA is managed by NMFS according to the FMPs for Groundfish of the Gulf of Alaska and the Groundfish Fishery of the Bering Sea Aleutian Islands Area. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620.

This action proposes amendments to regulations as follows: (1) Consolidate § 675.2 into § 672.2; § 675.3 into § 672.3; § 675.4 into § 672.4; and § 675.5 into § 672.5; (2) remove the requirement for the groundfish utilization survey at § 672.5(d) and (e) and other outdated requirements; (3) update and replace §§ 672.2, 672.3, 672.4 (including the Federal Fisheries Permit Application), and 672.5 (including logbooks, reports, and forms); (4) amend §§ 672.7, 675.27, and § 677.4; (5) revise the scientific term for steelhead trout at §§ 672.20(e)(1) and 675.20(c)(1); (6) place all tables and figures currently found in part 675 in part 672, revised and renumbered, and add new tables and figures; (7) revise and insert references to tables and figures within the text of parts 672 and 675; (8) revise and insert paragraph titles to several paragraphs in parts 672 and 675; (9) revise the time citation ''00:01 a.m.'' to read ''0001 hours'' in §§ 672.20(a), 675.20(a), 672.23(f), and 675.23(d); (10) revise GOA reporting area codes from 61, 62, 63, 64, 65 to read 610, 620, 630, 640, and 650; (11) revise and insert references to GOA reporting areas; (12) add new GOA reporting area code 690 and new BSAI reporting area codes 300, 400, and 550; (13) place all reporting area codes and coordinates in maps and tables; and (14) divide most reporting areas into Alaska state waters and Federal waters for reporting purposes. A description of, and reasons for, these actions follow.

I. Consolidation of Regulations

Although the GOA and BSAI have separate FMPs, much of the regulatory text for the two management areas is the same. NMFS proposes to remove duplicate text that is found also in part 672 (GOA management area) from several sections of part 675 (BSAI management area) and to replace the removed text with a cross reference to part 672. This action will shorten the regulations as well as simplify and clarify the text. Those sections affected would be: Section 675.2 into § 672.2 (Definitions); § 675.3 into § 672.3 (Relation to other laws); § 675.4 into § 672.4 (Permits); and § 675.5 into § 672.5 (Recordkeeping and reporting).

II. Removal of Existing Regulations

NMFS would remove outdated regulations that no longer apply to the groundfish fisheries. This action would shorten the regulatory text and create a simpler, more pertinent body of regulations.

A. Groundfish Utilization Surveys

NMFS proposes to remove regulations at § 672.5(d) and (e) that require completion of an annual groundfish utilization survey. The original purpose of the survey was to estimate domestic annual processing (DAP) groundfish utilization each year for purposes of allocating groundfish among foreign fishing, DAP, and joint-venture processing (JVP) operations. Since 1990, the groundfish fisheries have been fully domesticated, and foreign fishing and JVP operations have been discontinued. Groundfish utilization surveys are no longer needed. The time spent on the labor-intensive surveys by industry provides no useful guidance for annual projections of DAP harvest and production activity.

B. Text Within 675.27(g)

NMFS proposes to remove regulations at § 675.27(g), regarding the Western Alaska Community Development Program, Community Development Quota (CDQ) requirements, that are entitled ''CDQ fishing requirements,'' since these regulations are found in recordkeeping and reporting requirements at § 672.5.

C. Logbooks

1. *Duration of Set or Trawl.* NMFS proposes to remove recordkeeping and reporting requirements at § 672.5 for Catcher Vessels and Catcher/Processors to record duration of set or trawl in the Catcher Vessel Daily Fishing Logbook (DFL) and Catcher/Processor Daily Cumulative Production Logbook (DCPL), respectively. This information can be obtained from the logbook through calculations of start and end times.

2. *Joint-venture Operation.* The requirement to record in a DFL whether delivery by a Catcher Vessel was made to a foreign processor vessel in a joint-venture operation would be removed, since joint-venture operations for groundfish no longer occur in the EEZ off Alaska.

3. *Number of Days Fishing Activity.* The requirement to record the number of days that fishing activity was conducted and when fish were received would be removed from the weekly

production report. This information, originally thought to provide effort information, did not result in useful information.

III. Revision of Regulations

The need for existing recordkeeping and reporting requirements was discussed in the preamble to the proposed rule for Amendments 13 and 18 to the FMPs (54 FR 36333, September 1, 1989). The recordkeeping and reporting requirements implemented under Amendments 13 and 18 (54 FR 50386, December 6, 1989) subsequently were revised to repeal monthly product value reporting requirements (55 FR 34933, August 27, 1990). Additional revisions were published for public comment and implemented under a 1991 interim final rule (56 FR 9636, March 7, 1991). No comments were received on the interim final rule during the public review period.

NMFS proposes to incorporate recommendations from the groundfish industry, NMFS management staff, and enforcement staff to reduce the reporting burden; to improve the format of the logbooks, reports, and forms; and to create a more effective, timely, and comprehensive collection of information to facilitate management of the groundfish fisheries in the EEZ off Alaska.

A. Revisions to Statistical and Reporting Areas

1. *Coordinates.* The codes and coordinates for GOA and BSAI statistical and reporting areas would be presented in maps and tables (see Figures 1 and 3). This action would provide easy access to these data by allowing the reader to refer to one source for all statistical and reporting area coordinates.

2. *Three-digit GOA statistical and reporting area codes.* Two-digit statistical and reporting area designations in the GOA would be changed to 3-digit designations by adding a zero to existing area numbers (e.g., reporting areas 61 through 65 would be designated as areas 610 through 650, respectively) (see Figure 3). Since existing statistical and reporting areas associated with the BSAI are designated by 3-digit codes, revision of the GOA-associated designations to 3-digit statistical and reporting area codes would provide a uniform coding system for incorporation into computer databases.

3. *Bogoslof District, BSAI.* A final rule implementing Amendment 17 to the FMP for the Groundfish Fishery of the BSAI (57 FR 10430, March 26, 1992) established Statistical Area 518 (the Bogoslof District) for purposes of managing the Aleutian Basin pollock stock. The coordinates published for the new area were incorrectly specified in the final rule. NMFS proposes to correct the error in the coordinates of Statistical Area 518 (see Figure 1).

4. *Division between BSAI and GOA Reporting Areas.* The division between reporting areas associated with BSAI and GOA would be described in coordinates along the Alaska Peninsula and the Aleutian Islands (see Figures 1 and 3). Lack of this information has caused problems in groundfish catch reporting and in enforcement of regulations.

5. *New Reporting Areas.* Generally, a reporting area includes a statistical area plus adjacent Alaska State waters and is identified by the same number used to identify the statistical area. NMFS proposes to add six reporting areas that do not follow that scheme (see Figures 1 and 3).

Two reporting areas would be added that are completely within Alaska State waters. Reporting area 649 (Prince William Sound) and reporting area 659 (inside waters of Southeast Alaska) would be established to allow inseason managers to differentiate reported sablefish and demersal shelf rockfish harvests that are managed under Alaska State groundfish quotas.

Four additional reporting areas would be added that are completely outside the EEZ off Alaska—300, 400, 550, and 690—to allow differentiation of fish harvested in areas outside the EEZ.

6. *Corrections to Existing Statistical Areas.* NMFS proposes that a code correction be made for two statistical areas, 511 and 522, that had already been assigned to two non-contiguous areas. This duplication was the result of the subdivision of a large area into smaller areas and inadvertence by not renumbering those areas. Statistical areas 508 and 509 would replace the two areas 511, and statistical areas 523 and 524 would replace the two areas 522. This action would result in more precise identification of the location of groundfish harvested in the BSAI.

7. *Distinction between Federal and State Portions of a Reporting Area.* NMFS proposes to distinguish between Federal waters (statistical areas) and Alaska State waters in any reporting area. Two questions would be added in the DFL, Buying Station Daily Cumulative Logbook (DCL), DCPLs, Weekly Production Report (WPR), Daily Production Report (DPR), Buying Station Check-in/Check-out, and Mothership or Catcher/Processor Check-in/Check-out Reports to request that the reader distinguish between Federal waters or Alaska State waters within any reporting area. This action would accommodate fee assessment of landings under the North Pacific Fisheries Research Plan (Research Plan) authorized by the Magnuson Act. Research Plan fee assessments would not apply to fish, except Pacific halibut, caught in Alaska State waters.

B. Figures and Tables

NMFS proposes to clarify coordinates and descriptions of areas in various sections of parts 672 (GOA management area) and 675 (BSAI management area) and to use maps and tables. Existing figures and tables from both the GOA and BSAI would be renumbered, revised, and placed after the text of part 672. In-text tables would be removed from paragraph 672.24(d), presented in Figure 5b, and relocated after the text of part 672; in-text tables would be removed from paragraph 672.24(e), presented in Table 6, and relocated after the text of part 672. This action would codify and improve access to information needed for compliance with recording and reporting requirements in the following figures and tables:

Figure 1—BSAI statistical and reporting areas; a—map, b—coordinates of reporting areas;

Figure 2—BSAI Catcher Vessel Operational Area (map includes coordinates);

Figure 3—GOA statistical and reporting areas; a—map, b—coordinates of reporting areas;

Figure 4—Herring Savings Areas in the BSAI; a—map, b—coordinates of reporting areas and effective dates;

Figure 5—Kodiak Island areas closed to trawls other than pelagic trawl gear; a—map, b—coordinates of reporting areas;

Figure 6—Length overall of a vessel; and

Figure 7—Location of trawl test areas in the GOA and the BSAI (map includes coordinates).

Table 1—Product codes (new table; these codes were formerly referred to in the Product Recovery Rate (PRR) tables at §§ 672.20 and 675.20). The various products that may be made from groundfish are described here and are assigned a 2-digit product code. Product codes also are used to describe various types of discard; these often are referred to as discard products;

Table 2—Species codes (new table). The various species of groundfish are listed in Table 2;

Table 3—Product recovery rates for groundfish species (renumbered);

Table 4—Bering Sea Subarea Steller Sea Lion Protection Areas (moved from text);

Table 5—Aleutian Islands Subarea Steller Sea Lion Protection Areas (moved from text);

Table 6—Gulf of Alaska Steller Sea Lion Protection Areas (moved from text);

Table 7—Communities determined to be eligible to apply for Community Development Quotas (renumbered);

Table 8—Harvest Zone Codes for Use with Product Transfer Reports and Vessel Activity Reports (new table);

Table 9—Required Logbooks, Reports, and Forms (new table);

Table 10—Gulf of Alaska, Retainable Percentages (renumbered); and

Table 11—Bering Sea and Aleutian Islands Management Area, Retainable Percentages (renumbered).

C. Revisions to Logbooks, Reports, and Forms

NMFS proposes to improve the format of existing logbooks, reports, and forms and to add a new logbook for Buying Stations, in addition to the following revisions:

1. *Metric tons.* The required weight units used to record amounts of landings, product, and discards of groundfish and herring would be revised from ''pounds (lb) or nearest 0.1 metric ton (mt)'' to ''pounds (lb) or nearest 0.01 metric ton (mt)'' on all forms and logbooks. This change would allow NMFS to obtain catch data from processors that traditionally have smaller landings. Finer resolution in the database would increase the accuracy of inseason quota management actions.

2. *Daily Fishing Logbook (DFL).* Recording the delivery date under Catch Delivery Information in the DFL would be required for use by NMFS Enforcement personnel. Other revisions to the DFL are proposed to improve the format of the logsheet and to record CDQ information.

At-sea discard information would be required from Catcher Vessels, without increasing the paperwork burden, through the use of an additional blue sheet in the DFL that the operator turns in to the processor with the harvest.

3. *Daily Cumulative Production Logbook (DCPL)*—a. *Mothership or Catcher/Processor.* The Catcher/Processor and Mothership DCPLs would be revised to improve the format of the logsheet and to record CDQ information.

b. *Shoreside Processor.* The Shoreside Processor DCPL would be divided into two parts identified as Part I and Part II, to allow for a greater number of daily entries, particularly in the product section. This action would allow flexibility in the use of the logbook by different types and sizes of Shoreside Processors. Part I would include four subparts: Processor identification information, Catcher Vessel delivery information, landings information, and discarded species information.

Part II would be used to record product information by week-ending date, management area, and species and product codes. Data would be recorded on one page for up to 3 weeks. This action would result in a more efficient page layout and a reduced reporting burden, since groundfish products would not be reported for separate reporting areas or gear types.

Other revisions are proposed to improve the format of the logsheet and to record CDQ information.

4. *Buying Station Daily Cumulative Logbook (DCL).* The operator or manager of a Buying Station would be required to maintain a DCL to record data about Catcher Vessel delivery and discards as well as Buying Station discards that occur after acceptance of the delivery from the Catcher Vessel and prior to delivery to a Mothership or Shoreside Processor. The proposed requirements for a Buying Station DCL would provide a defined procedure for a Mothership or Shoreside Processor to obtain data and report to NMFS any Catcher Vessel harvest and discard that is received, sorted, and delivered by a Buying Station.

5. *Product Transfer Report (PTR).* The name of the Product Transfer Logbook (PTL) would be changed to Product Transfer Report (PTR) to give the form a more accurate name, because it is not a logbook. An addition would be made to the PTR to indicate whether the form is an original or revised report; this information would improve data entry speed and accuracy.

a. *Mothership or Catcher/Processor PTR.* Each Mothership or Catcher/Processor would be required to record the U.S. Coast Guard document number of the vessel on a PTR and collect additional identification information concerning transfer handling, destination, or receipt. The PTR would indicate whether a particular transfer forms the beginning or end of an audit period; whether a transfer is a complete or partial offload; and what amount and type of products remain on board after the transfer. These revisions are needed to simplify and improve the accuracy of audits of Motherships or Catcher/Processors by NMFS Enforcement personnel.

A harvest zone designation (distinct from reporting or statistical area, see Table 8) would be added to the PTR to indicate whether groundfish were harvested in or outside of the EEZ off Alaska. This information is needed to complete requests for statistical reports from members of Congress and other Government officials. NMFS Enforcement and Management personnel would use the information recorded on the PTR to determine ownership of a product from its place of origin to its first destination.

b. *Shoreside Processor.* The Shoreside Processor PTR would be revised to collect additional information concerning transfer handling, destination, or receipt.

6. *Check-in/Check-out Report*—a. *Mothership or Catcher/Processor.* This form would be revised to determine intended primary and secondary target species. This information would provide fishery managers with an estimate of fishing effort for individual species in each reporting area and would enable them to better project fishery closures. Regulations also would be clarified to allow operators of Catcher/Processors using hook-and-line or pot gear to be ''checked into'' several reporting areas if their gear is simultaneously fishing in those areas.

A requirement would be added to record processor type, because vessels can function in more than one category. This information is needed by fishery managers for quota management purposes.

Other revisions are proposed to improve the format of the form and to record CDQ information.

b. *Shoreside Processor.* A Check-in/Check-out report would be required; it would supersede the existing requirement for a Shoreside Processor to check in through submittal of its first WPR. Each Shoreside Processor would submit a Check-in report before receipt of groundfish, either at the beginning of the fishing year or after submission of a Check-out report.

Products from groundfish often are stored at the Shoreside Processor premises for a long time, along with stored products resulting from non-groundfish fisheries. Fish products that are not intended for storage are transferred from a Shoreside Processor directly to trucks. An accurate on-site groundfish product inventory and audit is therefore difficult to conduct. The Shoreside Processor Check-in/Check-out Report would be revised to record the amount of fish product held or stored at the time the Check-in report is filed. Enforcement personnel would be able to use this information to calculate product on hand at any time from records in the shoreside DCPL and PTRs.

Other revisions are proposed to improve the format of the form and to record CDQ information.

c. *Buying Station*. Each operator or manager of a Buying Station would be required to submit a Check-in Report prior to receipt of groundfish from Catcher Vessels; a Check-out Report would be required upon completion of delivery of all groundfish to a Mothership or Shoreside Processor. A separate Check-in or Check-out Report would be required from the Buying Station operator or manager for each Shoreside Processor or Mothership with which the Buying Station is associated. The proposed Buying Station Check-in/Check-out Report would yield additional effort information needed for quota management.

7. *Weekly Production Report (WPR).* The current WPR would be replaced with two similar WPR forms, one for use by Shoreside Processors and another for use by Motherships or Catcher/Processors.

a. *Mothership or Catcher/Processor.* Each Mothership or Catcher/Processor would be required to record the fisheries permit number and the Alaska Department of Fish and Game (ADF&G) processor code, because both are necessary to identify a processor; a requirement is proposed to report the number of crew members at the end of each weekly reporting period—this information is needed by NMFS economists for national statistical reports; and a requirement is proposed to add the preprinted ADF&G fish ticket numbers that were issued to Catcher Vessels for each delivery made during the weekly reporting period. This information is needed by NMFS to make comparisons of processor-reported Federal and State data for reporting accuracy.

Intended target information would be requested for the next weekly reporting period. This information would be used by NMFS to improve fishing effort projection for individual species.

Two additions would be made to the WPR to improve data entry speed and accuracy, the first to indicate whether the form is an original or revised report, and the second to indicate the date the WPR is prepared.

All references to ''retained products'' would be revised to read ''product''. Other revisions are proposed to improve the format of the form and to record CDQ information.

b. *Shoreside Processor.* Each Shoreside Processor would be required to record product data by management area (BSAI or GOA) rather than by reporting area. This would be used for enforcement purposes and for the collection of economic data for national statistical reports.

8. *Daily Production Report (DPR).* NMFS would be authorized to require, through publication in the **Federal Register**, submittal of DPRs. The DPR is used when a fishery is expected to be of too short duration to be managed based on weekly reports. The product reporting section of the DPR would be revised to create separate sections for responses from Shoreside Processors or Motherships and Catcher/Processors. The Shoreside Processor would report landings, as weighed before processing, in a section entitled, ''Shoreside Only Landings''. The Mothership and Catcher/Processor would report weight of products in a section entitled, ''Processor Vessel Only Products''. Within these columns, the following information would be recorded for each product: The product code; indication of ancillary, primary, or reprocessed product type; and weight in metric tons. Other revisions would be made to indicate whether a given DPR is an original or revised report and to record the date the form was prepared. This information is needed to ensure an accurate and complete database. Several questions would be added to request additional information about the processor's representative. Other revisions to the DPR are proposed to improve the format of the form and to record CDQ information.

9. *U.S. Vessel Activity Report (VAR).* Existing regulations at 50 CFR 299.5 require U.S. vessels fishing in the Russian economic zone (EZ) in joint ventures to submit a VAR prior to crossing the seaward boundary of the EEZ. The applicability of the VARs currently required under § 299.5 would be expanded to require vessels to submit a VAR report to the Regional Director immediately prior to crossing the seaward boundary of the EEZ off Alaska or immediately prior to crossing the U.S./Canada international boundary between Alaska and British Columbia. The VAR would be used to augment existing recordkeeping and reporting requirements and would not replace the Check-in/Check-out reports or WPRs required under § 672.5.

NMFS has observed increased landings in U.S. ports of undocumented fish allegedly harvested from waters seaward of the EEZ off Alaska. NMFS is concerned that some portion of these landings may consist of fish illegally harvested in the EEZ off Alaska. Although the VAR requirements under § 299.5 address this concern for U.S. vessels fishing in the Russian EZ, NMFS believes that better information must be obtained concerning U.S. fishing activities in waters outside the EEZ off Alaska in order to document the origin and quantity of fish that are brought into the EEZ.

In light of the new requirements for distinguishing between groundfish fishing activity in state or Federal waters as well as pending international regulations for migratory species such as swordfish, the VAR would assist NMFS in tracking U.S. fishing vessels entering or leaving fishing grounds off Alaska from the coterminous United States and/or Hawaii.

10. *Designated Representative.* Each owner, operator, or manager of each Catcher Vessel, Catcher/Processor, Mothership, Shoreside Processor, or Buying Station participating in, or receiving groundfish from, a groundfish fishery would be required to identify a contact person or representative prior to commencement of fishing or processing activities. Although the representative may complete the logbooks, the required reports and forms, or both, the owner, operator, and manager would remain responsible for accurate and timely completion of all reporting requirements. The operator or manager is not always present or available to complete the recordkeeping and reporting requirements. In some instances the logbooks are maintained on board a vessel while the reports and forms are submitted to NMFS by a person in an office hundreds of miles away. Identifying a representative prior to commencement of fishing activity ensures a smooth data flow between the industry and NMFS, allowing quota management to be accurate and timely.

The name of the representative would be required to be reported on each logbook, WPR, DPR, PTR, Check-in/Check-out Report, and VAR (if applicable) and that the telephone number and facsimile number for that person also be provided. Proposed revisions to the recordkeeping requirements would standardize the text on all forms and logbooks to refer to that person as the representative.

D. Maintenance and Retention of Records

NMFS proposes the following requirements for the benefit of Enforcement officers conducting audits of Catcher Vessels, Motherships, Catcher/Processors, Shoreside Processors, and Buying Stations. In order to conduct a thorough audit of fish products on board or on site, paper copies of all groundfish transactions must be accessible for inspection.

1. *Three-year retention period.* The original (white) copy of all logbooks and a paper copy of all reports and forms submitted to NMFS required under amended §§ 672.5 and 675.5 would be

required to be retained for 3 years after the end of the fishing year during which the records were made. In addition, the Mothership and Shoreside Processor would be required to retain the original (white) copy of all DCLs from associated Buying Stations for 3 years, and the Buying Station would be required to retain the pink copy of all DCLs for 3 years.

2. *Retention during fishing year.* The original (white) copy of all logbooks, a paper copy of all reports and forms submitted to NMFS, and the blue DFL logsheet received from Catcher Vessels required under amended §§ 672.5 and 675.5 would be required to be kept on board a vessel or on site a Shoreside Processor or Buying Station until the end of the fishing year during which the records were made and for as long thereafter as fish or fish products recorded in the logbook, reports, and forms are retained.

3. *Inspection.* The logbooks, reports, and forms required under amended §§ 672.5 and 675.5 would be required to be made available for inspection upon the request of an authorized officer.

4. *Weekly reporting periods.* As set out in regulations at §§ 672.2 and 675.2, the current definition of a weekly reporting period is the period from 0001 hours Monday morning until 2359 hours the following Sunday night, Alaska local time (A.l.t.). NMFS has determined that this weekly reporting period does not allow sufficient time to obtain, process, and summarize weekly observer reports in the subsequent week. A reporting period from Sunday-through-Saturday would provide an additional day to process observer data, integrate these data with the WPRs received from the industry, and produce weekly catch reports. Therefore, the definition of the weekly reporting period would be changed to 0001 hours, A.l.t., Sunday morning until 2359 hours, A.l.t., the following Saturday night. The deadline for receipt of WPRs from Motherships, Catcher/Processors, and Shoreside Processors would remain Tuesday at 1200 hours, A.l.t.

5. *Inactive and active periods.* The operator or manager would be required to account for each day of the fishing year by indicating active and inactive periods on the Catcher Vessel DFL, Catcher/Processor DCPL, Mothership DCPL, Buying Station DCL, and Shoreside Processor DCPL. A single logbook page could be used to account for inactive periods of more than one day within a quarter.

6. *CDQ Information.* The DFL, DCL, and DCPL would be used to account for groundfish harvested under the CDQ Program through the addition of questions on those logbooks, as well as on WPRs, DPRs, and Check-in/Check-out reports to indicate CDQ information. The CDQ information would be transferred from the logbook by the manager or operator of a Mothership, Catcher/Processor, or Shoreside Processor to WPRs, DPRs, and Check-in/Check-out reports. This information is needed because CDQ quotas are managed on an individual basis, and because CDQ harvest information must be kept separate from other types of management quotas.

7. *Scientific name for steelhead trout.* The scientific name for steelhead trout would be revised to read, ''*Oncorhynchus mykiss*'' in §§ 672.20(e) and 675.20(c). The scientific community currently prefers this new term as a more precise description of steelhead trout.

8. *Time.* The time citation ''00:01 a.m.'' in §§ 672.20(a), 675.20(a), 672.23, and 675.23 would be changed to read ''0001 hours'' to conform with the revised definition of fishing year.

Classification

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. OMB approval for the majority of this information has been obtained under OMB control numbers 0648–0206 and 0213; additions and revisions to the collection have been submitted to OMB for approval. Additional burden would result from the requirements set forth for the new Buying Station DCL and Check-in/Check-out report, and also from revisions to existing reports.

An estimated additional response time for compliance with these new forms is expected to be between 25 minutes and 2.0 hours annually for the operator or manager of each processor or Buying Station and 27 minutes for each Catcher Vessel operator. The additional annual burden to Shoreside Processors and Buying Stations to comply with requirements for Check-in/Check-out reports is estimated to average about 8 minutes and 6 minutes, respectively, for each Check-in or Check-out report. Revisions to the format of other logbooks and/or additions to information collected by logbooks are minimal and are not anticipated to significantly increase reporting burden to the industry. The requirements include: The U.S. Vessel Activities Report, 15 minutes; Weekly Production Report, 18 minutes; Daily Production Report, 10 minutes; Processor Product Transfer Report, 11 minutes; and the Catcher Vessel Logbook, 15 minutes.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS proposes to consolidate several sections of regulations in parts 672 and 675 by correcting errors, clarifying vague text, removing outdated requirements, as well as simplifying and streamlining the remaining regulations, including the recordkeeping and reporting requirements. All of the recommended revisions are designed to make the regulations easier for the public to use and to enhance the ability of NMFS to collect more accurate and timely groundfish data and to improve the management of the groundfish fisheries. To the extent that there will be additional burden for the industry, it will be minor when compared with the increased ease of use resulting from clarification, simplification, and streamlining.

Send comments regarding this burden estimate or any other aspect of this collection-of-information, including suggestions for reducing this burden, to NMFS and to OIRA, OMB (see **ADDRESSES**).

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

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: August 15, 1995.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

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

Subpart A—General

2. In § 672.1, paragraph (a) is revised to read as follows:

§ 672.1 Purpose and scope.

(a) Regulations in this part, along with parts 602, 620, 676, and 677 of this chapter, implement the Fishery Management Plan for Groundfish of the Gulf of Alaska.

* * * * *

3. Section 672.2 is revised to read as follows:

§ 672.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Active/inactive periods—(1) *Active periods*—(i) *Catcher Vessel.* An active period for a Catcher Vessel means a period of time when the Catcher Vessel is in a reporting area (except 300, 400, 550, or 690) or gear remains on the grounds in a reporting area (except 300, 400, 550, or 690) regardless of the vessel location.

(ii) *Shoreside Processor, Mothership, Catcher/Processor, and Buying Station.* An active period for a Shoreside Processor, Mothership, Catcher/Processor, and Buying Station means a period of time when checked-in.

(2) *Inactive periods*—(i) *Catcher Vessel.* An inactive period for a Catcher Vessel means any period which does not qualify as an active period.

(ii) *Shoreside Processor, Mothership, Catcher/Processor, or Buying Station.* An inactive period for a Shoreside Processor, Mothership, Catcher/Processor, or Buying Station means a period of time when not checked-in.

ADF&G means the State of Alaska Department of Fish and Game.

Alaska local time (A.l.t.) means the current Alaska time, either daylight savings time or standard time.

Alaska State waters means waters shoreward of the exclusive economic zone (EEZ) off Alaska.

Aleutian Islands Subarea (AI) of the BSAI means that portion of the EEZ contained in Statistical Areas 541, 542, and 543 (see Figure 1 of this part).

Authorized fishing gear means hook-and-line, jig, longline, longline pot, nonpelagic trawl, nontrawl, pelagic trawl, pot-and-line, and trawl; defined as follows:

(1) *Hook-and-line* means a stationary, buoyed, and anchored line with hooks attached, or the taking of fish by means of such a device;

(2) *Jig* means a single non-buoyed, non-anchored line with hooks attached, or the taking of fish by means of such a device;

(3) *Longline* means a stationary, buoyed, and anchored line with hooks or two or more groundfish pots attached, or the taking of fish by means of such a device (see § 672.24(b) or § 675.24(b) of this chapter);

(4) *Longline pot* means a stationary, buoyed, and anchored line with two or more pots attached, or the taking of fish by means of such a device;

(5) *Nonpelagic trawl* means a trawl other than a pelagic trawl;

(6) *Nontrawl* means hook-and-line, jig, longline, and pot-and-line gear;

(7) *Pelagic trawl* means a trawl that:

(i) Has no discs, bobbins, or rollers;

(ii) Has no chafe protection gear attached to the foot rope or fishing line;

(iii) Except for the small mesh allowed under paragraph (7)(ix) of this definition:

(A) Has no mesh tied to the fishing line, head rope, and breast lines with less than 20 inches (50.8 cm) between knots, and has no stretched mesh size of less than 60 inches (152.4 cm) aft from all points on the fishing line, head rope, and breast lines and extending past the fishing circle for a distance equal to or greater than one half the vessel's length overall; or

(B) Has no parallel lines spaced closer than 64 inches (162.6 cm), from all points on the fishing line, head rope, and breast lines and extending aft to a section of mesh, with no stretched mesh size of less than 60 inches (152.4 cm), extending aft for a distance equal to or greater than one half the vessel's length overall;

(iv) Has no stretched mesh size less than 15 inches (38.1 cm) aft of the mesh described in paragraph (7)(iii) of this definition for a distance equal to or greater than one half the vessel's length overall;

(v) Contains no configuration intended to reduce the stretched mesh sizes described in paragraphs (7)(iii) and (iv) of this definition;

(vi) Has no flotation other than floats capable of providing up to 200 lb (90.7 kg) of buoyancy to accommodate the use of a net-sounder device;

(vii) Has no more than one fishing line and one foot rope for a total of no more than two weighted lines on the bottom of the trawl between the wing tip and the fishing circle;

(viii) Has no metallic component except for connectors (e.g., hammerlocks or swivels) or net-sounder device aft of the fishing circle and forward of any mesh greater than 5.5 inches (14.0 cm) stretched measure;

(ix) May have small mesh within 32 ft (9.8 m) of the center of the head rope as needed for attaching instrumentation (e.g., net-sounder device); and

(x) May have weights on the wing tips;

(8) *Pot-and-line* means a stationary, buoyed line with a single pot attached, or the taking of fish by means of such a device; and

(9) *Trawl* means a conical-shaped net that is towed through the water for catching fish or other organisms. The net accumulates its catch in the closed, small end (usually called the cod end). This definition includes, but is not limited to, Danish and Scottish seines and otter trawls.

Bering Sea and Aleutian Islands Management Area (BSAI) means the Bering Sea and Aleutian Islands subareas (see Figure 1 of this part).

Bering Sea Subarea (BS) of the BSAI means that portion of the EEZ contained in Statistical Areas 508, 509, 512, 513, 514, 516, 517, 518, 519, 521, 523, 524, and 530 (see Figure 1 of this part).

Bogoslof District means that part of the Bering Sea Subarea contained in Statistical Area 518 (see Figure 1 of this part).

Breast line means the rope or wire running along the forward edges of the side panels of a net, or along the forward edge of the side rope in a rope trawl.

Buying Station means a person or vessel that receives unprocessed groundfish from a vessel for delivery at a different location to a Shoreside Processor or Mothership and that does not process those fish.

Bycatch Limitation Zone 1 (Zone 1) means that part of the Bering Sea Subarea that is contained within the boundaries of Statistical Areas 508, 509, 512, and 516 (see Figure 1 of this part).

Bycatch Limitation Zone 2 (Zone 2) means that part of the Bering Sea Subarea that is contained within the boundaries of Statistical Areas 513, 517, and 521 (see Figure 1 of this part).

Catcher/Processor means a vessel that is used for catching fish and processing that fish.

Catcher Vessel means a vessel that is used for catching fish and that does not process on board.

Catcher Vessel Operational Area (CVOA) (see Figure 2 of this part and § 675.22(g) of this chapter).

Central Aleutian District means that part of the Aleutian Islands Subarea contained in Statistical Area 542 (see Figure 1 of this part).

Community Development Plan (CDP) (applicable through December 31, 1995) means a plan for a specific Western Alaska community or group of communities approved by the Governor of the State of Alaska and recommended to NMFS under § 675.27 of this chapter.

Community Development Quota (CDQ) (applicable through December 31, 1995) means a Western Alaska community development quota for pollock assigned to an approved CDP. All CDQs, in the aggregate, equal one-half of 15 percent of the total allowable catch specified for pollock that is placed in reserve under § 675.20(a)(3) of this chapter.

Community Development Quota Program (CDQ program) (applicable through December 31, 1995) means the Western Alaska Community

Development Program implemented under § 675.27 of this chapter.

Community Development Quota Reserve (CDQ reserve) (applicable through December 31, 1995) means one-half of 15 percent of the total allowable catch specified for pollock in each subarea or district that is placed in reserve under § 675.20(a)(3) of this chapter.

Daily reporting period or day is the period from midnight until the following midnight using Alaska local time (A.l.t.).

Directed fishing means any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable by catch amount for that species or species group as calculated under § 672.20 (g) and (h) and § 675.20 (h) and (i) of this chapter.

Donut Hole means international waters of the Bering Sea outside the limits of the EEZ and Russian economic zone as depicted on the current edition of NOAA chart INT 813 Bering Sea (Southern Part).

Eastern Aleutian District means that part of the Aleutian Islands Subarea contained in Statistical Area 541 (see Figure 1 of this part).

Exclusive Economic Zone (EEZ) (see § 620.2 of this chapter).

Federal waters means waters within the EEZ off Alaska.

Fish product weight means the weight of the fish product in pounds or to at least the nearest hundredth of a metric ton (0.01 mt). Fish product weight is based upon the number of production units and the weight of those units. Production units include pans, cartons, blocks, trays, cans, bags, and individual fresh or frozen fish. The weight of a production unit is the average weight of representative samples of the product, and may include additives but not packaging. Any allowance for water added cannot exceed 5 percent of the gross product weight (fish, additives, and water).

Fishing activity (see definition for fishing in § 620.2 of this chapter).

Fishing circle means the circumference of a trawl intersecting the center point on a fishing line, and that is perpendicular to the long axis of a trawl.

Fishing day (see part 676 of this chapter).

Fishing line means a length of chain or wire rope in the bottom front end of a trawl to which the webbing or lead ropes are attached.

Fishing month (see § 672.26 or § 675.26 of this chapter).

Fishing trip: (1) For purposes of directed fishing calculations, see § 672.20(h)(2) and § 675.20(i)(2) of this chapter.

(2) For purposes of pollock roe retention, see § 672.20(i)(4) and § 675.20(j)(5) of this chapter.

Fishing year means the period of time beginning at 0001 hours, A.l.t., on January 1 and ending at 2359 hours, A.l.t., on December 31 (see § 672.23(a) and § 675.23(a) of this chapter).

Foot rope means a chain or wire rope attached to the bottom front end of a trawl and attached to the fishing line.

Gear Deployment: (1) *For trawl gear* means where the trawl gear reaches the fishing level and begins to fish.

(2) *For jig/troll, hook-and-line, or longline gear* means where the gear enters the water.

(3) *For pot-and-line gear* means where the first pot enters the water.

Gear Retrieval—(1) *For trawl gear*, gear retrieval means where retrieval of trawl cable commences.

(2) *For jig/troll gear*, gear retrieval means where the jig/troll gear leaves the water.

(3) *For hook-and-line or longline pot gear*, gear retrieval means where the last hook-and-line or longline pot gear of a set leaves the water, regardless of where the majority of the haul or set took place.

(4) *For pot-and-line gear*, gear retrieval means where the last pot of a set leaves the water.

Governor means the Governor of the State of Alaska.

Groundfish means target species and the ''other species'' category, specified annually pursuant to § 672.20(a)(1) or § 675.20(a)(1) of this chapter.

Gulf of Alaska (GOA) means that portion of the EEZ contained in Statistical Areas 610, 620, 630, 640, and 650 (see Figure 3 of this part).

Head rope means a rope bordering the top front end of a trawl.

Herring Savings Area means any of three areas in the BSAI presented in Figure 4 of this part (see also § 675.21(c)(2) of this chapter for additional closure information):

Inshore component (applicable through December 31, 1995) means that part of the U.S. groundfish fishery off Alaska that includes:

(1) All shoreside processing operations;

(2) All processor vessels that process, on a daily average during any weekly reporting period, less than 18 mt of Pacific cod harvested in the GOA and pollock in aggregate round weight equivalents, and are less than 125 ft (38.1 m) in length overall; and

(3) All processor vessels in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) that process, at a single geographic location during a fishing year, pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the GOA, and that submit a Check-in notice and weekly production report as required at § 672.5(c). For purposes of this definition, a single geographic location will be determined by the geographic coordinates reported on a Check-in report submitted by the vessel operator when that vessel engages in a directed fishery for Pacific cod in the GOA or pollock for the first time in a fishing year.

IPHC means International Pacific Halibut Commission (see part 301 of this title).

Joint venture processing (JVP) (see § 611.2 of this chapter).

Landing means off-loading fish.

Length overall (LOA) of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (see Figure 6 of this part).

Logbook means Daily Cumulative Production Logbook (DCPL), Daily Cumulative Logbook (DCL), or a Daily Fishing Logbook (DFL) required by § 672.5.

Manager, with respect to any Shoreside Processor or Buying Station, means the individual responsible for the operation of the Shoreside Processor operation or Buying Station.

Maximum sustainable yield (MSY) (see part 602 of this chapter).

Mothership means a vessel that receives and processes groundfish from other vessels.

Net-sounder device means a sensor used to determine the depth from the water surface at which a fishing net is operating.

nm means nautical mile.

Non-allocated or nonspecified species means those fish species, other than prohibited species, for which a TAC has not been specified (e.g., grenadier, prowfish, lingcod).

Observer means any person certified under the NMFS Observer Plan (see part 676 of this chapter).

Offshore component (applicable through December 31, 1995) means all processor vessels in the U.S. groundfish fisheries off Alaska not included in the definition of ''inshore component.''

Optimum yield (OY) (see § 672.20 and § 675.20 of this chapter).

''Other species'' is a category that consists of groundfish species in each management area that are not specified

as target species (see § 672.20 and § 675.20 of this chapter).

Processing, or to process, means the preparation of fish to render it suitable for human consumption, industrial uses, or long-term storage, including but not limited to cooking, canning, smoking, salting, drying, freezing, or rendering into meal or oil, but does not mean icing, bleeding, heading, or gutting.

Processor vessel means, unless otherwise restricted, any vessel that has been issued a Federal fisheries permit and that can be used for processing groundfish.

Quarter or quarterly reporting period means one of four successive 3-month periods during a calendar year, which begin at 0001 hours, A.l.t., on the first day of each quarter, and end at 2359 hours, A.l.t., on the last day of each quarter. The four quarters for each year are specified as follows:

1st quarter:January 1 through March 31
2nd quarter:April 1 through June 30
3rd quarter:July 1 through September 30
4th quarter:October 1 through December 31

Regional Director means Director, Alaska Region, National Marine Fisheries Service.

Regulatory area means any of three areas of the EEZ in the GOA (see Figure 3 of this part) described as follows:

(1) *Eastern Regulatory Area* means Statistical Areas 640 and 650.

(2) *Central Regulatory Area* means Statistical Areas 620 and 630.

(3) *Western Regulatory Area* means Statistical Area 610.

Reporting area means any of the areas described in Figures 1 and 3 of this part.

Resident fisherman (see § 675.27(d)(7) of this chapter).

Round-weight equivalent means the weight of fish calculated by dividing the weight of the primary product made from that fish by the standard product recovery rate for that primary product as listed in § 672.20(j), or, if not listed, the weight of fish calculated by dividing the weight of a primary product by the standard product recovery rate as determined using the best available evidence on a case-by-case basis.

Set means a string of pots or hook-and-line gear or a group of pots that are deployed in a similar location with similar soak time.

Shoreside Processor or shoreside processing operation, means any person or vessel that receives unprocessed groundfish, except Catcher/Processors, Motherships, Buying Stations, restaurants, or persons receiving groundfish for use as bait or personal consumption.

Southeast Outside District of the GOA means that part of the Eastern Regulatory Area contained in Statistical Area 650 (see Figure 3 of this part).

Statistical area means the part of any reporting area defined in Figures 1 and 3 of this part, contained in the EEZ.

Steller Sea Lion Protection Areas (for BSAI, see Tables 4 and 5 of this part, § 672.24(e), § 227.12 of this title, and § 675.24(f) of this chapter); for GOA, see Table 6 of this part).

Stem means the foremost position of a vessel; a section of timber or cast, forged or rolled metal to which the sides of a vessel are united at the fore end with the lower end scarfed to the keel and the bowsprit, if one is present, resting on the upper end.

Stern means the aftermost part of the vessel.

Stretched mesh size means the distance between opposite knots of a four-sided mesh when opposite knots are pulled tautly to remove slack.

Support vessel means any vessel that is used in support of other vessels regulated under this part and part 675 of this chapter, including, but not limited to, supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment or other supplies, or transporting processed fish. The term ''support vessel'' does not include processor vessels or tender vessels.

Target species are those species or species groups, except the ''other species'' category, for which a TAC is specified pursuant to § 672.20(a) and § 675.20(a) of this chapter.

Tender Vessel means a vessel that is used to transport unprocessed fish received from another vessel to a Shoreside Processor, Mothership, or Buying Station.

Total allowable catch (TAC) (see § 672.20(a)(2) and § 675.20(a)(2) of this chapter).

Transfer includes any loading, offloading, shipment or receipt of any groundfish product, including quantities transferred inside or outside the EEZ, within any state's territorial waters, within the internal waters of any state, at any Shoreside Processor, or any offsite meal reduction plant.

Trawl test areas (see Figure 7 of this part and § 672.24(f) and § 675.24(g) of this chapter).

Vessel Activity Report (VAR) (see § 672.5(c)(5)).

Vessel operations category (see § 672.4).

Walrus Protection Areas (see § 675.22(f) of this chapter).

Weekly reporting period means a time period, which begins at 0001 hours, A.l.t., Sunday morning (except during the first week of each year, when it starts on January 1) and ends at 2359 hours, A.l.t., the following Saturday night (except during the last week of each year when it ends on December 31).

West Yakutat District of the GOA means that part of the Eastern Regulatory Area of the GOA contained in Statistical Area 640 (see Figure 3 of this part).

Western Aleutian District means that part of the Aleutian Islands Subarea contained in Statistical Area 543 (see Figure 1 of this part).

Wing tip means the point where adjacent breast lines intersect or where a breast line intersects with the fishing line.

4. In § 672.3, paragraphs (a) and (c) are revised to read as follows:

§ 672.3 Relation to other laws.

(a) *Foreign fishing.* Regulations governing foreign fishing for groundfish in the GOA are set forth at § 611.92 of this chapter. Regulations governing foreign fishing for groundfish in the BSAI are set forth at § 611.93 of this chapter. Regulations governing U.S. nationals fishing in the Russian fisheries are set forth in part 299 of this title.

* * * * *

(c) *Domestic fishing for groundfish.* Regulations governing the conservation and management of groundfish in the GOA for vessels of the United States are set forth at this part and parts 620, 676, and 677 of this chapter. Regulations governing the conservation and management of groundfish in the BSAI are set forth in this part and parts 620, 675, 676, and 677 of this chapter.

* * * * *

5. Section 672.4 is revised to read as follows:

§ 672.4 Fisheries permit.

(a) *General.* (1) No vessel of the United States may be used to fish for groundfish in the GOA or in the BSAI unless the owner first obtains a Federal fisheries permit for the vessel issued under this part, except as provided in paragraph (a)(2) of this section. A Federal fisheries permit is effective only until December 31 of the year in which it is issued. Fisheries permits are issued without charge.

(2) Vessels of the United States that fish in the GOA or BSAI for any non-groundfish species, including but not limited to, halibut, crab, salmon, scallops, and herring, and that do not retain any bycatch of groundfish are not required to obtain a Federal fisheries permit issued under this part.

(b) *Federal Fisheries Permit Application*—(1) *Request for*

application and permit. A person may obtain an application for a Federal fisheries permit required under paragraph (a) of this section from: National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668, fax number: 907–586–7465.

(2) *Completed application.* (i) A person may obtain the Federal fisheries permit required under paragraph (a) of this section by submitting a written permit application to the address given in paragraph (b)(1) of this section.

(ii) The owner or operator of a vessel must answer each question on the permit application in the manner set forth in paragraph (c) of this section.

(iii) The owner or operator must mail completed forms to the address given in paragraph (b)(1) of this section or fax completed forms to: (907)586–7313.

(iv) The owner or operator must complete a separate application for each vessel or processor and must retain a copy of each completed or revised application.

(v) The owner or operator must type or print legibly the information requested on the application.

(3) *Application deficiency.* Upon receipt of an incomplete or improperly completed fisheries permit application, the Regional Director will notify the applicant of the deficiency in the permit application. If the applicant fails to correct the deficiency, the permit will not be issued. No permit will be issued to an applicant until a complete application is received.

(c) *Permit application contents.* The owner or operator must record:

(1) If application is for an amended permit, the current Federal Fisheries Permit number and information that has changed.

(2) If for a vessel, the complete name and homeport (city and state) of the vessel; the ADF&G vessel number; the U.S. Coast Guard documentation number or Alaska registration number; the vessel's length overall and registered net tonnage; and the telephone, fax, and COMSAT (satellite communication) numbers used on board the vessel.

(3) *Shoreside processor information.* If a shoreside processor, refer to § 677.4(b) of this chapter.

(4) *Owner information.* The owner of the vessel or shoreside processor must record the owner's name, permanent business mailing address, telephone and fax numbers; and the name of any company (other than the owner) that manages the operations of the vessel or shoreside processor.

(5) *Federal fisheries permit information.* The owner must record:

(i) The fishery or fisheries and the vessel operations category for which the permit would apply as set forth under paragraph (e) of this section and § 672.2;

(ii) If a Catcher Vessel or Catcher/Processor, the gear type(s) used for groundfish operations;

(iii) If a Catcher Vessel, whether groundfish is retained only as bycatch from halibut, crab, or salmon fisheries; and whether sablefish (black cod) is the only groundfish targeted in the GOA.

(6) *Signature.* The owner must sign and date the application.

(d) *Fisheries permit issuance.* (1) Except as provided in subpart D of 15 CFR part 904, upon receipt of a properly completed permit application, the Regional Director will issue a fisheries permit required by paragraph (a) of this section.

(2) The Regional Director will send the fisheries permit to the applicant along with the appropriate logbooks as provided under § 672.5.

(e) *Vessel operations category.* (1) A fisheries permit issued under paragraph (d)(1) of this section authorizes a vessel to conduct operations as a Catcher Vessel, Catcher/Processor, Mothership, Tender Vessel, or Support Vessel.

(2) A vessel may be issued a fisheries permit as a support vessel or as any combination of the other four categories (Catcher Vessel, Catcher/Processor, Mothership, Tender Vessel). A vessel permitted as a Catcher Vessel, Catcher/Processor, Mothership, or Tender Vessel may also conduct all operations authorized for a support vessel.

(f) *Amended permit.* (1) An owner or operator who applied for and received a fisheries permit under this section must notify the Regional Director, in writing, of any change in the information provided under paragraph (c) of this section within 10 days of the date of that change.

(2) An application for an amended permit must be made on the permit application as set forth in paragraph (c) of this section.

(3) If the application is for an amended fisheries permit required under paragraph (a) of this section and designates a change or addition of a vessel operations category, the amended permit must be on board the vessel before the new type of operations begins.

(g) *Duration.* (1) A fisheries permit remains in effect through December 31 of the year for which it is issued unless it is revoked, suspended, or modified under 15 CFR part 904 (Civil Procedures), or unless it is surrendered or invalidated.

(2) A fisheries permit is surrendered when the original permit is submitted to and received by NMFS Enforcement Office in Juneau.

(h) *Alteration.* No person may alter, erase, or mutilate any fisheries permit issued under paragraph (a) of this section. Any fisheries permit that is intentionally altered, erased, or mutilated is invalid.

(i) *Transfer.* A Fisheries permit issued under paragraph (a) of this section is not transferable or assignable and is valid only for the vessel for which it is issued.

(j) *Inspection.* (1) An original fisheries permit issued under paragraph (a) of this section must be carried on board the vessel whenever the vessel is fishing. Photocopied or faxed copies are not considered originals.

(2) A permit issued under paragraph (a) of this section must be presented for inspection upon the request of any authorized officer.

(k) *Sanctions.* Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(l) *Condition.* No person may use a vessel for which the Regional Director has issued a permit under paragraph (a) of this section to fish in the Donut Hole, or to possess fish in the EEZ that were caught in the Donut Hole, during the fishing year for which the permit is issued.

(m) *Moratorium permit.* In addition to the Federal fisheries permit required by paragraph (a) of this section and any other permits that may be required by Federal or Alaska state regulations, a moratorium permit may be required by part 676 of this chapter for a vessel of the United States if the vessel is used to conduct directed fishing for moratorium groundfish species, as defined at § 676.2 of this chapter, in the Gulf of Alaska or Bering Sea and Aleutian Islands management area.

6. Section 672.5 is revised to read as follows:

§ 672.5 Recordkeeping and reporting.

(a) *Applicability and general requirements*—(1) *Applicability.* (i) Except as otherwise provided, this section applies to:

(A) Any Catcher Vessel, Mothership, Catcher/Processor, or Tender Vessel, 5 net tons or larger, which is required to have a fisheries permit under § 672.4; and

(B) Any Shoreside Processor, Mothership, or Buying Station that receives groundfish from vessels required to have a fisheries permit under § 672.4.

(ii) A Shoreside Processor, Mothership, or Buying Station subject to recordkeeping and reporting requirements must report all groundfish and prohibited species received, including:

(A) Fish received from vessels not required to have a fisheries permit;

(B) Fish received under contract for handling or processing for another processor.

(2) *Responsibility*. The operator of a Catcher Vessel, Catcher/Processor, Mothership, or Buying Station delivering to a Mothership (hereafter referred to as the operator) and the manager of a Shoreside Processor or Buying Station delivering to a Shoreside Processor (hereafter referred to as the manager) are each responsible for compliance with the applicable recordkeeping and reporting requirements of this section. In addition, the owner of a vessel, Shoreside Processor, or Buying Station must ensure that the operator, manager, or designated representative (see paragraph (b) of this section) complies with these requirements and is responsible for compliance.

(3) *Groundfish logbooks and forms*. The Regional Director will prescribe and provide logbooks and forms required under this section as shown in Table 9 of this part. The operator or manager must use these logbooks and forms or obtain approval from the Regional Director to use electronic versions of the logbooks and forms.

(4) *Participant identification information*. The operator or manager must record on all required records, reports, and logbooks:

(i) The name of the Catcher Vessel, Catcher/Processor, Mothership, Shoreside Processor, or Buying Station as displayed in official documentation;

(ii) If a vessel, the Federal Fisheries Permit number and ADF&G vessel number (if applicable);

(iii) If a processor, the Federal Processor Permit number and ADF&G processor number;

(iv) If a Buying Station, the name and ADF&G vessel number (if applicable) of the Buying Station; the name, ADF&G processor number, and Federal Processor Permit number of associated processor;

(v) If a Shoreside Processor or land-based Buying Station, the geographic location of operations.

(5) *Representative identification*. The name, daytime business telephone number (including area code), fax or TELEX number, and the COMSAT number (if applicable) of the representative;

(6) *Maintenance of records*—(i) *General*. The operator or manager must maintain all records, reports, and logbooks in a legible, timely, and accurate manner; in English; if handwritten, in indelible ink; if computer-generated, a printed, paper copy; and based on Alaska local time.

(ii) When applicable, the operator or manager must record in each report, form, and logbook the following information:

(A) *Page number*. Number the pages in each logbook consecutively, beginning with page one and continuing throughout the logbook for the remainder of the fishing year, except that the manager of a Shoreside Processor must number the DCPL pages within Part I and Part II separately beginning with page one, etc.;

(B) *Date*, presented as month-day-year;

(C) *Time*, in military format to the nearest hour, A.l.t.;

(D) *Position Coordinates*, latitude and longitude to the nearest second;

(E) *Reporting Area codes*, given in Figures 1 and 3 of this part;

(F) *Species codes*, each target species, the ''other species'' category, and prohibited species (see §§ 672.20(e) and 675.20(c) of this chapter), using the species codes given in Table 2 of this part;

(G) *Original/Revised Report*. If a report is the first one submitted to the Regional Director for a given date, gear type, and reporting area, ''ORIGINAL REPORT''. If report is a correction to a previously submitted report for a given date, gear type, and reporting area, ''REVISED REPORT'';

(H) *Metric tons*. The required weight units used to record amounts of landings, product, and discards of groundfish and herring must be recorded in pounds (lb) or to the nearest 0.01 mt on all forms and logbooks.

(7) *Active and inactive periods*. The operator or manager must, in the DFL, DCL, or DCPL:

(i) Account for each day of the fishing year by indicating active and inactive periods, as defined in § 672.2;

(ii) Use a separate logbook page for each day of an active period;

(iii) Indicate on one page the first and last day of an inactive period;

(iv) *Fishing activity*. The operator or manager must indicate all fishing activity, which is defined as follows:

(A) If a Catcher Vessel, harvest or discard of groundfish;

(B) If a Catcher/Processor, harvest, discard, or processing of groundfish;

(C) If a Mothership or Shoreside Processor, receipt, discard, or processing of groundfish;

(D) If a Buying Station, receipt, discard, or delivery of groundfish;

(v) If in an active period and there is fishing activity, the operator or manager must record:

(A) The gear type used to harvest the groundfish. If a Catcher Vessel or Catcher/Processor and using hook-and-line longline gear, the average number of hooks per skate;

(B) The reporting area code where gear retrieval was completed; whether gear retrieval was in Federal or Alaska State waters;

(C) If a Catcher Vessel, whether a NMFS-certified observer is on board the vessel. If a Catcher/Processor, Mothership, or Shoreside Processor, the number of NMFS-certified observers on board or on site;

(D) The number of crew, except certified observer;

(E) Whether harvest is under a CDQ program; if yes, the CDQ number;

(F) If a Catcher Vessel or Buying Station, the name and ADF&G processor number of the Mothership or Shoreside Processor to which groundfish deliveries were made;

(vi) If in an active period and there is no harvesting, discard, receipt, or processing of groundfish, the operator or manager must indicate ''NO FISHING ACTIVITY'' and briefly describe the reason.

(8) *Landings information*. The manager of a Shoreside Processor must:

(i) Record and report groundfish landings by species codes and product codes as defined in Tables 1 and 2 of this part for each reporting area, whether in Alaska State waters or Federal waters, gear type, and CDQ number;

(ii) Record in the DCPL each day on the day such landings occur, the following additional information:

(A) The daily combined scale weight of landings retained for processing from a Catcher Vessel or any associated Buying Station, in pounds or to at least the nearest 0.01 mt;

(B) If more than one page is used during a weekly reporting period, the total amount of landings carried forward from the previous page;

(C) At the end of each weekly reporting period, the cumulative total weight, calculated by adding the daily totals and total carried forward for that week;

(iii) Summarize the DCPL for each weekly reporting period on a WPR or for each day on a DPR (if applicable). If there were no landings during a reporting period, write ''NO LANDINGS'' on the first row of the WPR landings section or under the DPR landings column for that day.

(9) *Product information*. The operator or manager of a Catcher/Processor, Mothership, or Shoreside Processor must, where required:

(i) Record and report groundfish products by species codes, product codes, and product designations as

defined in Tables 1 and 2 of this part for each reporting area, whether in Alaska State waters or Federal waters, gear type, and CDQ number;

(ii) Record in the DCPL each day on the day such production occurs, the daily total, balance brought forward (except for Shoreside Processor), and cumulative total fish product weight (see § 672.2) for each product of groundfish in pounds or to at least the nearest 0.01 mt;

(iii) Summarize the DCPL for each weekly reporting period on a WPR or for each day on a DPR (if applicable). If there was no production during a weekly reporting period, indicate ''NO PRODUCTION'' on the first row of the WPR production section or under the DPR products column for that day.

(10) *Discarded/donated species information.* The manager or operator must, where required:

(i) Record and report discards and donations by species codes and discard product codes as defined in Tables 1 and 2 of this part for each reporting area, whether in Alaska State waters or Federal waters, gear type, and CDQ number;

(ii) Record the estimated daily total, balance brought forward, and cumulative total round fish weight in the DFL, DCL, or DCPL each day on the day such discards occur for each discard of groundfish species, groundfish species groups, and Pacific herring in pounds or to at least the nearest 0.01 mt;

(iii) Record the estimated daily total, balance brought forward, and cumulative total numbers in the DFL, DCL, or DCPL each day on the day such discards occur for each discard of Pacific salmon, steelhead trout, Pacific halibut, king crab, and Tanner crab;

(iv) Summarize the DCPL for each weekly reporting period on a WPR or for each day on a DPR (if applicable). If there were no discards during a reporting period, write ''NO DISCARDS'' on the first row of the WPR discard section or under the DPR discard column for that day.

(v) *Catcher Vessel discards/donations.* (A) The operator must record in the DFL discards that occur prior to and during harvest and must submit the blue DFL logsheets (discards copy) to the Buying Station, Mothership, or Shoreside Processor receiving the harvest at the end of the weekly reporting period;

(B) If a Catcher Vessel discards fish from an unsorted codend prior to delivery to a processor, the operator of the vessel must estimate and record in the DFL the amount and species composition of the discards made at sea (discard code 98);

(vi) *Buying Station discards/donations.* (A) The operator or manager must record in the DCL on a daily basis on the day such discard occurs, all discards that occur after receipt of harvest from a Catcher Vessel and prior to delivery to a Mothership or Shoreside Processor;

(B) If a blue DFL logsheet is received from a Catcher Vessel and contains reports of discards, the operator or manager must record in the DCL the discards on the day the DFL logsheet is received from the Catcher Vessel;

(vii) *Catcher/Processor discards/donations.* The operator must record in the DCPL on the day such discard occurs all discards that occur prior to harvest, during harvest, and during processing;

(viii) *Mothership or Shoreside Processor discards/donations.* (A) The operator or manager must record into the DCPL on a daily basis on the day such discard occurs, all discards that occur on site after receipt of groundfish, and all discards that occur during processing of groundfish;

(B) If a blue DFL logsheet is received from a Catcher Vessel and discards are reported, the operator or manager must record in the DCPL the discards on the day the DFL logsheet is received from the Catcher Vessel;

(C) If a yellow DCL logsheet is received from a Buying Station and discards are reported, the operator or manager must record in the DCPL the discards on the day the DCL logsheet is received from the Buying Station;

(11) *Contract processing.* (i) The manager of a Shoreside Processor or operator of a Mothership who receives groundfish to be handled or processed under contract for another processor or business entity must report these fish to the Regional Director consistently throughout a fishing year using one of two methods:

(A) Record landings (if applicable), discards, and products of contract-processed groundfish routinely in the DCPL without separate identification; or

(B) Record landings (if applicable), discards, and products of contract-processed groundfish in a separate DCPL identified by the name, Federal Processor permit number, Federal Fisheries permit number (if applicable), and ADF&G Processor code of the associated business entity;

(ii) If contract-processed groundfish records are kept separate from the routine DCPL, the operator or manager of the Mothership or Shoreside Processor must summarize and report that information on a WPR identified by the name, Federal Processor permit number, Federal Fisheries permit number (if applicable), and ADF&G Processor code of the associated business entity.

(12) *Alteration of records.* (i) The operator, manager, or any other person may not alter or change any entry or record in a logbook except that an inaccurate or incorrect entry or record may be corrected by lining out the original and inserting the correction, provided that the original entry or record remains legible.

(ii) No person except an authorized officer may remove any original page of any logbook.

(13) *Inspection of records.* The operator or manager of a Catcher Vessel, Catcher/Processor, Mothership, or Shoreside Processor, must make all logbooks, reports, and forms required under paragraph (a)(3) of this section available for inspection upon the request of an authorized officer.

(14) *Submittal of logbooks, reports and forms*—(i) *Quarterly submittal of logbook.* (A) The operator of a Catcher Vessel, Catcher/Processor, Mothership, or the manager of a Shoreside Processor must submit the yellow logsheets on a quarterly basis to: NMFS Alaska Fisheries Science Center, Logbook Program, 7600 Sand Point Way NE, Building 4, Seattle, WA 98115.

(B) The operator or manager must submit the yellow logsheets as follows: First quarter, by May 1 of that year; second quarter, by August 1 of that year; third quarter, by November 1 of that year; and fourth quarter, by February 1 of the following year.

(ii) *Submittal of reports and forms.* Reports and forms may be submitted by the operator or manager by:

(A) Using the NMFS printed form and faxing it to the fax number on the form; or

(B) Transmitting a data file with required information and forms to NMFS by modem or satellite (specifically INMARSAT standards A, B, or C).

(15) *Record retention*—(i) *Original copy.* (A) The operator of a Catcher Vessel, Catcher/Processor, or Mothership and the manager of a Shoreside Processor must retain the original (white) copy of all logbooks and a paper copy of all reports and forms, including those reports and forms that were originally submitted electronically:

(*1*) On site until the end of the fishing year during which the records were made and for as long thereafter as fish or fish products recorded in the logbook, reports, and forms are retained;

(*2*) For 3 years after the end of the fishing year during which the records were made;

(B) The operator or manager of a Buying Station must retain the original (white) copy of all DCLs required under paragraph (a)(2) of this section on site until the Buying Station has concluded receiving groundfish for a Shoreside Processor or Mothership and for as long as fish and fish products recorded in the DCL are retained by the Buying Station;

(ii) *Yellow DCL logsheet.* When the operator of a Mothership or the manager of a Shoreside Processor submits on a quarterly basis to NMFS, the yellow DCL logsheets received from associated Buying Stations per paragraph (a)(14) of this section, the operator or manager must retain a photocopy of the yellow DCL logsheets until the original DCL is received from the associated Buying Station operator or manager.

(iii) *Blue DFL logsheet.* The operator of a Mothership and the manager of a Shoreside Processor must retain the blue DFL logsheets (discard reports) through the last day of the fishing year during which the records were made.

(iv) *Pink DCL logsheet.* The operator or manager of a Buying Station must retain the pink DCL logsheets for 3 years after the end of the fishing year during which the records were made.

(16) *Integration of Buying Station records.* (i) The operator or manager of a Buying Station must maintain a separate DCL for each Shoreside Processor or Mothership to which the Buying Station delivers groundfish during a fishing year.

(ii) The operator or manager of a Buying Station must submit upon delivery of catch, the yellow DCL logsheets, to the Shoreside Processor or Mothership to which it delivers groundfish, along with the blue DFL logsheets and ADF&G fish tickets or catch receipts for that delivery.

(iii) Upon conclusion of receiving groundfish for a Shoreside Processor or Mothership, the Buying Station operator or manager must submit the original DCL to the Shoreside Processor manager or Mothership operator to which deliveries were made.

(iv) If the Mothership operator or the Shoreside Processor manager receives fish from a Buying Station, the operator or manager must incorporate all of the DCL information into the DCPL.

(b) *Designated representative.* The operator or manager of a Catcher Vessel, Mothership, Catcher/Processor, Shoreside Processor or Buying Station must identify one person to fill out and sign the logbook, complete the recordkeeping and reporting forms, or both, and to identify who will be the contact person for inquiries from NMFS. Designation of a representative under this paragraph does not relieve the owner, operator, or manager of responsibility for compliance with this part.

(c) *Catcher Vessel DFL and Catcher/Processor DCPL*—(1) Requirement. (i) The operator of each Catcher Vessel or Catcher/Processor subject to this part must:

(A) Answer each question on the DFL or DCPL in the manner set forth under paragraphs (c) (3) through (7) of this section; and

(B) Submit the DFL or DCPL in the manner set forth under paragraphs (c)(2) and (a)(14), respectively, of this section.

(ii) *Pair trawl.* If two Catcher Vessels are dragging a trawl between them (pair trawl), a separate DFL must be maintained by each of the vessels. Each vessel operator must log the amount of the catch retained by that vessel and any fish discarded by the vessel.

(2) *Time limit and submittal.* (i) The operator must record in the DFL or DCPL, the time, position, and estimated groundfish catch weight within 2 hours after gear retrieval;

(ii) The operator must record all other information required in the DFL or DCPL by noon of the day following gear retrieval if a Catcher Vessel or by noon of the day following completion of production if a Catcher/Processor;

(iii) The operator of a Catcher Vessel must submit the blue DFL logsheets with delivery of the harvest to the operator or manager of the Buying Station, Mothership, or Shoreside Processor;

(iv) Notwithstanding other time limits, the operator of a Catcher Vessel must record all information required in the DFL within 2 hours after the vessel's catch is offloaded;

(3) The operator must record on each page:

(i) Page number as defined at paragraph (a)(6)(i) of this section;

(ii) The date;

(iii) If a Catcher Vessel, the vessel name and ADF&G vessel registration number. If a Catcher/Processor, the name, ADF&G processor number, and Federal Processor number of the Catcher/Processor;

(iv) The operator's signature;

(v) Active/inactive period. Whether Catcher Vessel or Catcher/Processor is in an active or inactive period as defined at paragraph (a)(7) of this section.

(4) The operator must record the following for each haul or set:

(i) *Gear deployment.* The number of haul or set, by sequence; begin time and position coordinates of gear deployment; average sea depth and average gear depth, recorded to the nearest meter or fathom.

(ii) *Gear retrieval.* The date, time, and position coordinates of gear retrieval. If the vessel is using longline hook-and-line gear, the number of skates set. If the vessel is using longline pot or single pot gear, the total number of pots set.

(iii) The estimated total round fish weight of the groundfish catch; and

(iv) The species code of the intended target species from Table 2 of this part.

(5) The operator must record discard/donation information as defined at paragraph (a)(10) of this section.

(6) If a Catcher Vessel, the operator must record:

(i) The date of delivery.

(ii) The name, ADF&G processor code, and ADF&G fish ticket number(s) provided by the manager or operator of the Mothership, Shoreside Processor, or Buying Station.

(7) If a Catcher/Processor, the operator must record product information as set forth at paragraph (a)(9) of this section.

(d) Buying station DCL—(1) Requirement. The operator or manager of each Buying Station subject to this part must:

(i) Answer each question on the DCL in the manner set forth under paragraphs (d)(3) through (5) of this section; and

(ii) Submit the DCL in the manner set forth under paragraphs (d)(2) and (a)(14), respectively, of this section.

(2) Time limits. (i) The operator or manager must record entries in the DCL as to Catcher Vessel delivery information within 2 hours after completion of receipt of the groundfish.

(ii) All other information required in the DCL must be recorded by noon of the day following the day the receipt of groundfish was completed or discard occurred.

(3) The operator or manager must record for each page:

(i) Page number as defined at paragraph (a)(6)(i) of this section;

(ii) The date;

(iii) The Buying Station name and, if a vessel, the ADF&G vessel number;

(iv) The operator's or manager's signature.

(v) *Active/inactive period.* Whether Buying Station is in an active or inactive period as defined at paragraph (a)(7) of this section.

(vi) The name and ADF&G processor code of the Mothership or Shoreside Processor to which groundfish deliveries were made;

(vii) The number of crew;

(4) The operator or manager must record the following information for each delivery of groundfish:

(i) The ADF&G fish ticket number issued to each Catcher Vessel delivering groundfish. If a fish ticket was not

issued, the catch receipt number of the transaction;

(ii) Whether blue DFL logsheets were received from Catcher Vessel;

(iii) The time when receipt of groundfish catch was completed;

(iv) The name and ADF&G vessel registration number of the Catcher Vessel delivering the groundfish;

(v) The total groundfish delivery weight.

(5) The operator or manager must record discard/donation information as defined at paragraph (a)(10) of this section.

(e) *Mothership DCPL*—(1) *Requirement.* The operator of each Mothership subject to this part must:

(i) Answer each question on the DCPL in the manner set forth under paragraphs (e) (3) through (6) of this section; and

(ii) Submit the DCPL in the manner set forth under paragraphs (e)(2) and (a)(14), respectively, of this section.

(2) *Time limits.* (i) The operator must record entries in the DCPL as to Catcher Vessel or Buying Station delivery information within 2 hours after completion of the groundfish receipt.

(ii) All other information required in the DCPL must be recorded by noon of the day following the day the catch receipt, discard, or production occurred.

(3) The operator must record on each page:

(i) Page number as defined at paragraph (a)(6) of this section;

(ii) The date;

(iii) The name, ADF&G processor number, and Federal Processor number;

(iv) The operator's signature.

(v) Whether Mothership is in an active or inactive period as defined at paragraph (a)(7) of this section.

(4) The operator must record for each delivery:

(i) Whether delivery is from a Catcher Vessel or a Buying Station;

(ii) The name and ADF&G vessel registration number (if applicable) of the Catcher Vessel or Buying Station delivering the groundfish;

(iii) The time and position coordinates of the Mothership when groundfish catch is received;

(iv) The estimated total round fish weight of the groundfish catch;

(v) The ADF&G fish ticket number issued to each Catcher Vessel delivering groundfish. If a fish ticket is not issued, record the catch receipt number of the transaction.

(5) The operator must record discard/donation information as defined at paragraph (a)(10) of this section.

(6) The operator must record product information as defined at paragraph (a)(9) of this section.

(f) *Shoreside Processor DCPL*—(1) *Requirement.* The manager of each Shoreside Processor subject to this part must:

(i) Answer each question on the DCPL in the manner set forth under paragraphs (f) (3) through (7) of this section;

(ii) Submit the DCPL in the manner set forth under paragraphs (f)(2) and (a)(14), respectively, of this section.

(2) *Time limits*—(i) The manager must record in the DCPL all Catcher Vessel or Buying Station delivery information within 2 hours after completion of the groundfish receipt.

(ii) All other information required in the DCPL must be recorded by noon of the day following the day the catch receipt, discard, or production occurred.

(3) *Part I.* The operator must record on each page:

(i) *Page number.* If page is for an individual day, the date. If page is for 1 week, week-ending date. See also paragraph (a)(6)(i) of this section.

(ii) Participant identification information as defined at paragraph (a)(4) of this section.

(iii) The signature of the manager.

(iv) Whether the Shoreside Processor is in an active or inactive period as defined at paragraph (a)(7) of this section.

(4) *Delivery information.* The manager must record the following information for each delivery:

(i) Date and time when receipt of groundfish catch was completed;

(ii) Whether delivery is from Catcher Vessel or Buying Station;

(iii) Whether blue DFL logsheets were submitted by Catcher Vessel;

(iv) The name and ADF&G vessel registration number (if applicable) of the Catcher Vessel or Buying Station delivering the groundfish;

(v) The total scale weight of groundfish delivery in pounds or to the nearest 0.01 mt;

(vi) The ADF&G fish ticket number issued to the Catcher Vessel delivering groundfish. If a fish ticket is not issued, record the catch receipt number of the transaction.

(5) *Landings information (Part IC).* The manager must record:

(i) The date next to the appropriate day of the week (SUN through SAT);

(ii) Landings information as defined at paragraph (a)(8) of this section.

(6) *Discarded/donated species information (Part ID).* The manager must record:

(i) The date next to the appropriate day of the week (SUN through SAT);

(ii) Discard information as defined at paragraph (a)(10) of this section.

(7) *Part II.* The manager must record:

(i) Page numbers must be consecutive within Part II, beginning with page one for the first day product was produced after the start of the fishing year and continuing throughout the section for the remainder of the fishing year;

(ii) The name, ADF&G processor code number, and Federal Processor number of Shoreside Processor;

(iii) The signature of the manager.

(iv) *Product information.* (A) The week-ending date;

(B) The management area (BSAI or GOA);

(C) The date next to the appropriate day of the week (SUN through SAT);

(D) Product information as defined at paragraph (a)(9) of this section.

(g) *Groundfish product transfer report (PTR)*—(1) *Requirement.* (i) The operator of a Mothership or Catcher/Processor or the manager of a Shoreside Processor must record each transfer of groundfish product on a separate PTR.

(ii) The operator or manager must answer each question on the PTR in the manner set forth under paragraphs (g) (3) through (6) of this section for each transfer of groundfish or groundfish product and must submit the PTR in the manner set forth under paragraph (g)(2) of this section.

(iii) *Shoreside Processor transfer to offsite meal reduction plant.* The manager of a Shoreside Processor must report on a PTR those fish products which are subsequently transferred to an offsite meal reduction plant;

(iv) *Transfer of groundfish for bait.* The operator or manager must report on a PTR, daily sales or transfer of groundfish to vessels for bait. Individual sales of groundfish for bait purposes during a day may be aggregated when recording the amount of product leaving a facility that day.

(2) *Time limits and submittal.* The operator or manager must:

(i) Record all product transfer information on a PTR within 2 hours of the completion of the transfer;

(ii) Submit a copy of each PTR to the Regional Director to fax number 907–586–7313 within 24 hours of completion of transfer.

(3) The operator or manager must record on each page:

(i) Whether an original or revised report, as defined at paragraph (a)(6) of this section;

(ii) Page numbers must be numbered sequentially, with the first transfer of the fishing year as page 1 and continuing throughout the remainder of the fishing year;

(iii) If product (including raw fish) is received, ''RECEIPT''. If product (including raw fish) is offloaded from a Mothership or Catcher/Processor,

''OFFLOAD''. If product (including raw fish) is shipped from a Shoreside Processor, ''SHIPMENT'';

(iv) Representative identification information, as defined at paragraph (a)(5) of this section;

(v) If a Catcher/Processor or Mothership, the participant identification information as defined at paragraph (a)(4) of this section and Coast Guard Documentation number. If a Shoreside Processor, the participant identification information as defined at paragraph (a)(4) of this section.

(4) *Transfer information.* The operator or manager must record the following information for each transfer:

(i) If another vessel is involved with the transfer, the name and call sign of the vessel receiving or delivering groundfish or groundfish products;

(ii) If a Mothership or Catcher/Processor and the transfer takes place in port, the port of landing and country if a foreign location;

(iii) If transfer is made to an agent, the agent's name. For purposes of this part, agent is defined as the transport company, the buyer, or the distributor;

(iv) *Intended first destination of product.* (A) If an offload or shipment, the intended destination of vessel or agent receiving groundfish or groundfish product. If receipt, not applicable;

(B) If an offload or shipment has several destinations, the primary or first intended destination;

(C) If offload or shipment is going to a single agent and initial destination but requires loading on multiple vans, trucks, or airline flights, the transfer may be recorded on a single PTR page;

(v) *Date and time of product transfer*—(A) *Start date.* The date and time the transfer starts;

(B) *Finish date.* The date and time the transfer is completed:

(*1*) If shipment is an individual van load or flight, the date and time when each shipment leaves the plant;

(*2*) If shipment involves multiple vans or trucks, the date and time when loading of vans or trucks is completed for each day;

(*3*) If shipment involves air freight, record date and time when the last air freight shipment of the day leaves the plant;

(vi) *Position transferred.* If a Catcher/Processor or Mothership and transfer of product is made at sea, the transfer position coordinates.

(5) *Products and quantities offloaded, shipped, or received.* (i) If a Catcher/Processor or Mothership, the Harvest Zone code of the area in which groundfish were harvested as defined in Table 8 of this part;

(ii) The species code and product code for each product transferred as defined in Tables 1 and 2 of this part;

(iii) The number of cartons or production units transferred;

(iv) The average net weight of one carton for each species and product code in kilograms or pounds;

(v) The total net weight (fish product weight, to the nearest 0.01 mt) of the products transferred.

(6) If a Catcher/Processor or Mothership, whether transfer is a total or partial offload. If partial offload, the total fish product weight, to the nearest 0.01 mt, of the products (by harvest zone, species and product codes) remaining on board after this transfer;

(h) *Check-in/Check-out report*—(1) *Requirement*—(i) *Check-in report (BEGIN Message*). Before a Catcher/Processor commences harvest of groundfish in Alaska State or Federal waters of any reporting area except 300, 400, 550, or 690 or before a Mothership, Shoreside Processor or Buying Station commences receipt of groundfish from Alaska State or Federal waters of any reporting area except 300, 400, 550, or 690, the operator or manager must answer each question on the Check-in/Check-out report in the manner set forth under paragraphs (h)(3), (h)(4), and (h)(6) of this section; and must submit the Check-in/Check-out report in the manner set forth under paragraph (h)(2) of this section.

(ii) *Check-out report (CEASE Message*). (A) If a Catcher/Processor departs a reporting area or moves between Alaska State and Federal waters in a reporting area, and gear retrieval is complete from that area, the operator or manager must answer each question on a Check-out report in the manner set forth in paragraphs (h)(3), (h)(5), and (h)(6) of this section and must submit the Check-in/Check-out report in the manner set forth under paragraph (h)(2) of this section;

(B) If a Mothership or Shoreside Processor, and groundfish receipt and processing are completed, the operator or manager must answer each question on a Check-out report in the manner set forth in paragraphs (h)(3), (h)(5), and (h)(6) of this section and must submit the Check-in/Check-out report in the manner set forth under paragraph (h)(2) of this section;

(iii) *Transit between reporting areas.* If a vessel is transiting through a reporting area and is not fishing or receiving fish, a Check-in or Check-out report is not required from that area;

(iv) *Multiple vessel operations categories.* If a Catcher/Processor is functioning simultaneously as a Mothership in the same reporting area, the operator must submit a separate Check-in report for each vessel operations category. Upon completion of each activity, the operator must submit a Check-out report for each vessel operations category.

(2) *Time limits and submittal*—(i) *Check-in report.* (A) The operator of a Catcher/Processor must submit by fax a Check-in report (BEGIN message) to the Regional Director at fax number 907–586–7131 before commencing any harvest of groundfish.

(B) The operator or manager of a Mothership, Shoreside Processor, or Buying Station must submit by fax a Check-in report (BEGIN message) to the Regional Director at fax number 907–586–7131 before commencing any receipt of groundfish.

(ii) *Check-out report.* (A) If a Catcher/Processor, Mothership, or Buying Station, the operator must submit by fax a Check-out report (CEASE message) to the Regional Director at fax number 907–586–7131 within 24 hours after leaving either the Alaska State or Federal part of a reporting area.

(B) If a Shoreside Processor, the manager must submit by fax a Check-out report (CEASE message) to the Regional Director at fax number 907–586–7131 within 48 hours after the end of the applicable weekly reporting period that a Shoreside Processor ceases to process groundfish for the fishing year or has not processed groundfish for more than one weekly reporting period;

(3) The operator or manager must record on each page:

(i) Whether an original or revised report as defined at paragraph (a)(6) of this section;

(ii) Participant identification information as defined at paragraph (a)(4) of this section;

(iii) Representative identification information as defined at paragraph (a)(5) of this section;

(iv) If a Mothership or Catcher/Processor, the processor type and gear type used to harvest the groundfish. If groundfish are received by a Mothership in the same reporting area from more than one gear type, or if groundfish are caught by a Catcher/Processor in the same reporting area using more than one gear type, the operator must submit a separate form for each gear type;

(v) Whether harvest is under a CDQ Program; if yes, the CDQ number;

(vi) If a Buying Station, the number of crew on the last day of the reporting week.

(4) *BEGIN Message.* The operator or manager must record:

(i) If a Catcher/Processor, date and time that gear is deployed. If a

Mothership, date and time that receipt of groundfish begins;

(ii) If a Catcher/Processor, position coordinates where gear is set. If a Mothership, position coordinates where groundfish receipt is begun;

(iii) If a Catcher/Processor, the reporting area code of gear deployment and whether gear deployment was in Federal or Alaska State waters. If a Mothership or Buying Station, the reporting area code where groundfish receipt begins and whether receipt of groundfish occurred in Federal or Alaska State waters;

(iv) If a Shoreside Processor, the date receipt of groundfish will begin; whether checking in for first time in fishing year or checking in to restart receipt and processing of groundfish after filing a Check-out report;

(v) If a Mothership or Catcher/ Processor, the primary and secondary species expected to be harvested. If a Buying Station, the intended primary target expected to be harvested. A change in intended target species within the same reporting area does not require a new BEGIN message.

(5) *CEASE Message.* The operator or manager must report:

(i) If a Mothership or Catcher/ Processor, the date, time and position coordinates where the vessel departed the reporting area or moved to Federal waters from Alaska State waters within a reporting area, or vice versa;

(ii) If a Shoreside Processor or Buying Station, the date that receipt of groundfish ceased.

(6) *Fish or fish product held at plant.* If a Shoreside Processor, the weight of the fish or fish products in pounds or to the nearest 0.01 mt by species and product codes.

(i) *Weekly production report (WPR)*—(1) *Requirement.* (i) The operator or manager of a Mothership, Catcher/ Processor, or Shoreside Processor must answer each question on the WPR in the manner set forth in paragraphs (i)(3) through (i)(7) of this section for any week the Mothership, Catcher/ Processor, or Shoreside Processor is checked in pursuant to paragraph (h)(1)(i) of this section and must submit a WPR in the manner set forth in paragraph (i)(2) of this section.

(ii) *Multiple vessel operations categories.* The operator of a vessel that is authorized to conduct operations as both a Catcher/Processor and as a Mothership must submit separate WPRs to report production and discard as a Catcher/Processor and production and discard as a Mothership.

(2) *Time limits and submittal.* The operator or manager must submit a WPR to the Regional Director at fax number 907–586–7131 by 1200 hours, A.l.t., on Tuesday, following the end of the applicable weekly reporting period.

(3) The operator or manager must record on each page:

(i) Whether an original or revised report, defined at paragraph (a)(6) of this section;

(ii) Participant identification information as defined at paragraph (a)(4) of this section;

(iii) Representative identification information as defined at paragraph (a)(5) of this section and date WPR was completed;

(iv) If a Mothership or Catcher/ Processor, the processor type and gear type used to harvest the groundfish;

(v) Whether harvest is under a CDQ Program; if yes, the CDQ number;

(vi) The week-ending date;

(vii) The primary and secondary target codes for next week;

(viii) If a Mothership or Catcher/ Processor, the number of crew on last day of reporting week.

(4) *Landings information.* If a Shoreside Processor, see landings information requirement at paragraph (a)(8) of this section.

(5) *Discarded/Donated Species Information (Part ID).* For discard/ donate information requirement, see paragraph (a)(10) of this section.

(6) *Product information.* For product information requirement, see at paragraph (a)(9) of this section.

(7) *Catcher Vessel delivery information.* If ADF&G fish tickets are issued by the Mothership or Shoreside Processor, list the fish ticket numbers issued to Catcher Vessels for the weekly reporting period.

(j) *Daily Production Report (DPR)*—(1) *Notice.* If the Regional Director determines that DPRs are necessary to avoid exceeding a groundfish TAC or prohibited species bycatch allowance, NMFS may require submission of DPRs for reporting one or more specific species, in addition to a WPR. NMFS will publish a document in the **Federal Register** specifying the fisheries that require DPRs and the effective dates that submittal of DPRs is required.

(2) *Requirement.* (i) If a Catcher/ Processor, Mothership, or Shoreside Processor is checked-in to the specified reporting area and is harvesting, receiving, processing, or discarding the specified species, or is receiving reports from a Catcher Vessel of discard at sea of the specified species, the operator or manager must submit a DPR.

(ii) The operator of a Mothership or Catcher/Processor or manager of a Shoreside Processor must:

(A) Answer each question on the DPR in the manner set forth in paragraphs (j)(4) through (7) of this section;

(B) Submit the DPR in the manner set forth in paragraph (j)(3) of this section;

(C) Use a separate DPR for each gear type, processor type, and CDQ number.

(3) *Time limit and submittal.* The operator or manager must submit a DPR by fax to the Regional Director at fax number 907–586–7131 by 1200 hours, A.l.t., the day following each day of landings, discard, or production.

(4) The operator or manager must record on each page:

(i) Whether an original or revised report as defined at paragraph (a)(6) of this section;

(ii) Participant identification information as defined at paragraph (a)(4) of this section and processor type;

(iii) Representative identification information as defined at paragraph (a)(5) of this section;

(iv) The gear type used to harvest the groundfish, date received landings, and Federal reporting area where landings were harvested;

(v) Whether harvest is under a CDQ Program; if yes, the CDQ number.

(5) *Landing information.* If a Shoreside Processor, see landings information requirement at paragraph (a)(8) of this section.

(6) *Product information.* If a Mothership or Catcher/ Processor, see product information requirement at paragraph (a)(9) of this section.

(7) *Discard/donate information.* For discard/donate information requirement, see paragraph (a)(10) of this section.

(k) *U.S. Vessel Activity Report (VAR)*—(1) *Requirement.* The operator of a Catcher Vessel, a Catcher/Processor, or a Mothership regulated under this part that crosses the seaward boundary of the EEZ off Alaska or crosses the U.S./Canada international boundary between Alaska and British Columbia must answer each question on the VAR in the manner set forth in paragraphs (k)(3) and (4) of this section and must submit a VAR in the manner set forth in paragraph (k)(2) of this section.

(2) *Time limits and submittal.* The operator must submit a VAR by fax to NMFS Alaska Enforcement Division at fax number 907–586–7313 before the vessel crosses the seaward boundary of the EEZ off Alaska or the U.S./Canada international boundary between Alaska and British Columbia.

(3) The operator must record on each page:

(i) Whether an original or revised report as defined at paragraph (a)(6) of this section;

(ii) Participant identification information as defined at paragraph (a)(4) of this section;

(iii) Representative identification information as defined at paragraph

(a)(5) of this section and date VAR was completed;

(iv) If vessel is crossing into the seaward boundary of the EEZ off Alaska or crossing the U.S./Canada International boundary between Alaska and British Columbia, the operator must indicate return report. If vessel is crossing out of the seaward boundary of the EEZ off Alaska or crossing the U.S./Canada International boundary between Alaska and British Columbia into Canadian waters, the operator must indicate depart report.

(v) Port of landing;

(vi) Whether vessel is returning from fishing or departing to fish in the Russian Zone;

(vii) Date and time vessel will cross the EEZ off Alaska or the U.S./Canada international boundary between Alaska and British Columbia;

(viii) Latitude and longitude at the point of crossing the EEZ off Alaska or U.S./Canada international boundary between Alaska and British Columbia.

(4) *Fish or fish product on board the vessel when crossing the EEZ off Alaska or U.S./Canada international boundary.* (i) The Harvest Zone code of the area in which groundfish were harvested as defined in Table 8 of this part;

(ii) The species code and product code for each species on board as defined in Tables 1 and 2 of this part;

(iii) The fish product weight of products on board in pounds or to the nearest 0.01 mt.

7. In § 672.7, paragraphs (p) and (q) are added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(p) Fail to comply with or fail to ensure compliance with requirements at § 672.5.

(q) Use a Catcher Vessel or Catcher/Processor as a Tender Vessel before offloading all groundfish or groundfish product harvested or processed by that vessel.

Subpart B—Management Measures

8. Section 672.20, paragraphs (a)(1), (e)(1), and the headings for paragraphs (c)(1), (c)(2)(i), (c)(2)(ii), and (h)(2), and paragraphs (i)(4), and (j) are revised; headings for paragraphs (c)(1)(i)(A), (i)(1), (i)(2), (i)(3), and (i)(6) are added; paragraphs (g)(1) and (g)(3) are amended by revising the words, ''Table 2 to this section'' to read ''Table 10 of this part''; and tables 1 and 2 to the section are removed. The revised and added text reads as follows:

§ 672.20 General limitations.

(a) * * * (1) *Optimum yield (OY).* The OY for the fishery regulated by this section and by § 611.92 of this chapter is a range of 116,000 to 800,000 mt for target species and the ''other species'' category in the GOA, to the extent this amount can be harvested consistently with this part and part 611 of this chapter, plus the amounts of ''non-specified species'' taken incidentally to the harvest of target species and the ''other species'' category. The species categories are defined in Table 1 of the specifications as provided in paragraph (c)(1) of this section.

* * * * *

(c) * * * (1) *Proposed specifications, interim harvest limits, and final specifications.*

(i) * * *

(A) *Proposed specifications.* * * *

(2) * * * (i) *Directed fishing allowance—Applicable after December 31, 1995.* * * *

(ii) *Directed fishing allowance—Applicable through December 31, 1995.* * * *

* * * * *

(e) * * *

(1) Prohibited species, for the purpose of this part, means any of the species of Pacific salmon (*Oncorhynchus* spp.), steelhead trout (*Oncorhynchus mykiss*), Pacific halibut (*Hippoglossus stenolepis*), Pacific herring (*Clupea harengus pallasi*), king crab (*Paralithodes* spp. and *Lithodes* spp.), and Tanner crab (*Chionoecetes* spp.) caught by a vessel regulated under this part while fishing for groundfish in the GOA, unless retention is authorized by other applicable laws, including the Pacific Halibut Fishery Regulations (part 301 of this title).

* * * * *

(h) * * *

(2) *Fishing trip.* * * *

* * * * *

(i) * * *

(1) *Pollock roe.* * * *

(2) *Primary product.* * * *

(3) *Pollock product recovery rates.* * * *

(4) *Fishing trip.* For purposes of this paragraph, a fishing trip is defined as set forth under paragraph (h)(2) of this section.

* * * * *

(6) *Primary pollock product.* * * *

* * * * *

(j) *Standard product types and standard product recovery rates (PRR's)*—(1) *Calculating round-weight equivalents from standard PRRs.* Round-weight equivalents for groundfish products are calculated using the product codes and standard PRRs specified in Table 3 of this part.

(2) *Adjustments to Table 3 of this part.* The Regional Director may adjust standard PRRs and product types specified in Table 3 of this part if he determines that existing standard PRRs are inaccurate or if new product types are developed.

(3) *Procedure.* Adjustments to any standard PRR listed in Table 3 of this part that are within and including 15 percent of that standard PRR may be made without providing notice and opportunity for prior public comment. Adjustments of any standard PRR during a calendar year, when aggregated with all other adjustments made during that year, will not exceed 15 percent of the standard PRR listed in Table 3 of this part at the beginning of that calendar year, and no new product type will be announced until NMFS publishes the proposed adjustment and/or new product type in the **Federal Register** and provides the public with at least 30 days opportunity for public comment. Any adjustment of a PRR that acts to further restrict the fishery will not be effective until 30 days after the date of publication in the **Federal Register**. If NMFS makes any adjustment or announcement without providing a prior notice and opportunity for prior public comment, the Regional Director will receive public comments on the adjustment or announcement for a period of 15 days after its publication in the **Federal Register**.

9. Section 672.23 is revised to read as follows:

§ 672.23 Seasons.

(a) *Fishing year.* Fishing for groundfish is authorized from 0001 hours, A.l.t., January 1, through 2359 hours, A.l.t., December 31, subject to the other provisions of this part, except as provided in paragraphs (c) through (f) of this section.

(b) *Time of openings and closures.* The time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hours A.l.t.

(c) *Directed fishing for trawl rockfish.* Directed fishing for rockfish of the genera *Sebastes* and *Sebastolobus* with trawl gear is authorized from 1200 hours, A.l.t., on the first day of the third quarterly reporting period of a fishing year, through 2359 hours, A.l.t. December 31, subject to other provisions of this part.

(d) *Opening date for trawl groundfish.* Notwithstanding other provisions of this part, fishing for groundfish with trawl gear in the Gulf of Alaska is prohibited from 0001 hours, A.l.t. on January 1 through 1200 hours, A.l.t., January 20.

(e) *Directed fishing for pollock.* Subject to other provisions of this part,

directed fishing for pollock in the Western and Central Regulatory Areas is authorized: From 0001 hours, A.l.t., January 1, through 1200 hours, A.l.t., April 1; from 1200 hours, A.l.t., June 1, through 1200 hours, A.l.t., July 1; from 1200 hours, A.l.t., July 1, through 1200 hours A.l.t., October 1; and from 1200 hours A.l.t., October 1, through 2359 hours, A.l.t., December 31.

10. In § 672.24, paragraphs (d)(3) and (d)(4) are redesignated as paragraphs (d)(4) and (d)(5), respectively; headings for paragraphs (c)(4), newly redesignated (d)(4), newly redesignated (d)(5), and (f)(3) are added; paragraph (d)(3) is added; headings of paragraphs (a) and (b) are revised; and the heading of paragraph (d), and paragraphs (d)(1), (d)(2), (e), (f)(4), and (f)(5) are revised to read as follows:

§ 672.24 Gear limitations.

(a) *Marking of gear—longline marker buoys.* * * *

(b) *Gear restrictions—pots.* * * *

(c) * * *

(4) *Longline pot gear.* * * *

(d) *Trawls other than pelagic trawls—Kodiak Island*—(1) *Type I Closures.* No person may trawl in waters of the EEZ within the vicinity of Kodiak Island, as shown in Figure 5 of this part as Type I areas, from a vessel having any trawl other than a pelagic trawl either attached or on board.

(2) *Type II Closures.* From February 15 to June 15, no person may trawl in waters of the EEZ within the vicinity of Kodiak Island, as shown in Figure 5 of this part as Type II areas, from a vessel having any trawl other than a pelagic trawl either attached or on board.

(3) *Type III Closures.* Type III areas are open to any trawl other than a pelagic trawl gear year round.

(4) *Net-sounder device.* * * *

(5) *Footrope of the trawl.* * * *

(e) *Steller sea lion protection areas*—(1) *Year-round closures.* Trawling is prohibited in the GOA within 10 nm of the 14 Steller sea lion rookeries designated in Table 6a of this part.

(2) *Seasonal closures.* During January 1 through April 15, or a date earlier than April 15, if adjusted under § 675.20(a)(8) of this chapter trawling is prohibited in the GOA within 20 nm of each of the three Steller sea lion rookeries presented in Table 6b of this part.

(f) * * *

(3) *Test area criteria.* * * *

(4) *Kodiak Test Area.* Trawl gear testing is allowed in an area (Figure 7 of this part) bounded by straight lines connecting the following coordinates in the order listed at all times:

W. longitude	*N. latitude*
152° 02′	57° 37′
151° 25′	57° 37′
151° 25′	57° 23′
152° 02′	57° 23′
152° 02′	57° 37′

(5) *Sand Point Test Area.* Trawl gear testing is allowed in an area (Figure 7 of this part) bounded by straight lines connecting the following coordinates in the order listed at all times:

W. longitude	*N. latitude*
161° 00′	54° 50′
160° 30′	54° 50′
160° 30′	54° 35′
161° 00′	54° 35′
161° 00′	54° 50′

11. Part 672 is amended by adding a new heading and Tables 1 through 11 at the end of the part preceding the figures to part 672 to read as follows:

Tables—Part 672

TABLE 1.—PRODUCT CODES

Fish product code/description
1. Whole fish/food fish.
2. Whole fish/bait. Processed for bait.
3. Bled only. Throat, or isthmus, slit to allow blood to drain.
4. Gutted only. Belly slit and viscera removed.
6. Head and gutted, with roe.
7. Headed and gutted, Western cut. Head removed just in front of the collar bone, and viscera removed.
8. Headed and gutted, Eastern cut. Head removed just behind the collar bone, and viscera removed.
10. Headed and gutted, tail removed. Head removed usually in front of collar bone, and viscera and tail removed.
11. Kirimi. Head removed either in front or behind the collar bone, viscera removed, and tail removed by cuts perpendicular to the spine, resulting in a steak.
12. Salted and split. Head removed, belly slit, viscera removed, fillets cut from head to tail but remaining attached near tail. Product salted.
13. Wings. On skates, side fins are cut off next to body.
14. Roe. Eggs, either loose or in sacs, or skeins.
15. Pectoral girdle. Collar bone and associated bones, cartilage and flesh.
16. Heads. Heads only, regardless where severed from body.
17. Cheeks. Muscles on sides of head.
18. Chins. Lower jaw (mandible), muscles, and flesh.
19. Belly. Flesh in region of pelvic and pectoral fins and behind head.
20. Fillets with skin and ribs. Meat and skin with ribs attached, from sides of body behind head and in front of tail.
21. Fillets with skin, no ribs. Meat and skin with ribs removed, from sides of body behind head and in front of tail.
22. Fillets with ribs and no skin. Meat with ribs with skin removed, from sides of body behind head and in front of tail.
23. Fillets, skinless/boneless. Meat with both skin and ribs removed, from sides of body behind head and in front of tail.
24. Deep-skin fillet. Meat with skin, adjacent meat with silver lining, and ribs removed from sides of body behind head and in front of tail, resulting in thin fillets.
30. Surimi. Paste from fish flesh and additives.
31. Minced. Ground flesh.
32. Fish meal. Meal from fish and fish parts, including bone meal.
33. Fish oil. Rendered oil.
34. Milt. (in sacs, or testes).
35. Stomachs. Includes all internal organs.
36. Octopus/squid mantles. Flesh after removal of viscera and arms.
37. Butterfly, no backbone, Head removed, belly slit, viscera and most of backbone removed; fillets attached.
39. Bones (if meal, report as 32).
86. Donated Salmon. Includes salmon retained and donated under Salmon Donation Program.
97. Other retained product.

TABLE 1.—PRODUCT CODES—Continued

Fish product code/description
Discard Product Codes
92. Discard, bait. Whole fish used as bait on board vessel.
94. Discard, consumption. Fish or fish products eaten on board or taken off the vessel for personal use.
96. Previously discarded fish (decomposed) taken with trawl gear in current fishing efforts. Discarded.
98. Discard, at sea. Whole groundfish and prohibited species discarded by catcher vessels, Catcher/Processors, Motherships, or Buying Stations delivering to Motherships.
99. Discard, dockside. Discard after delivery and before processing; Discard, at plant. In-plant discard of whole groundfish and prohibited species by Shoreside Processors and Buying Stations delivering to Shoreside Processors before and during processing.
M99 Discard, off site meal reduction plant. Discarded fish that are transferred to any off site facility for reduction to fish meal, fish oil and/or discard at sea.
Product Designation
A Ancillary. Product made in addition to a primary product from the same fish.
P Primary. Product made from each fish with the highest recovery rate.
R Reprocessed. Product that results from processing a previously reported product.

TABLE 2—SPECIES CODES

Code	Species
110	Pacific cod.
120	Miscellaneous flatfish (all flatfish without separate codes).
121	Arrowtooth flounder and/or Kamchatka flounder.
122	Flathead sole.
123	Rock sole.
124	Dover sole.
125	Rex sole.
126	Butter sole.
127	Yellowfin sole.
128	English sole.
129	Starry flounder.
131	Petrale sole.
132	Sand sole.
133	Alaska Plaice flounder.
134	Greenland turbot.
135	Greenstripe rockfish.
136	Northern rockfish.
137	Bocaccio rockfish.
138	Copper rockfish.
141	Pacific ocean perch (*S. alutus* only).
142	Black rockfish.
143	Thornyhead rockfish (all *Sebastolobus* species).
145	Yelloweye rockfish.
146	Canary rockfish.
147	Quillback rockfish.
148	Tiger rockfish.
149	China rockfish.
150	Rosethorn rockfish.
151	Rougheye rockfish.
152	Shortraker rockfish.
153	Redbanded rockfish.
154	Dusky rockfish.
155	Yellowtail rockfish.
156	Widow rockfish.
157	Silvergray rockfish.
158	Redstripe rockfish.
159	Darkblotched rockfish.
160	Sculpins.
166	Sharpchin rockfish.
167	Blue rockfish.
175	Yellowmouth rockfish.
176	Harlequin rockfish.
177	Blackgill rockfish.
178	Chilipepper rockfish.
179	Pygmy rockfish.
181	Shortbelly rockfish.
182	Splitnose rockfish.
183	Stripetail rockfish.
184	Vermilion rockfish.
185	Aurora rockfish.
193	Atka mackerel.

TABLE 2—SPECIES CODES—Continued

Code	Species
270	Pollock.
510	Smelt.
511	Eulachon.
516	Capelin.
689	Sharks.
700	Skates.
710	Sablefish.
870	Octopus.
875	Squid.
Group Codes. These group codes may be used if individual species cannot be identified.	
144	Slope rockfish (aurora, blackgill, Bocaccio, redstripe, silvergray, chilipepper, darkblotched, greenstriped, harlequin, pygmy, shortbelly, splitnose, stripetail, vermillion, yellowmouth, sharpchin).
168	Demersal shelf rockfish (china, copper, quillback, rosethorn, tiger, yelloweye, canary).
169	Pelagic shelf rockfish (blue, dusky, yellowtail, widow).
171	Shortraker/rougheye rockfish.
Prohibited Species Coees	
000	Unspecified salmon.
200	Pacific halibut.
235	Pacific herring.
410	Salmon, Chinook.
420	Salmon, Sockeye.
430	Salmon, Coho.
440	Salmon, Pink.
450	Salmon, Chum.
540	Steelhead trout.
920	Unspecified king crab.
921	Red king crab.
922	Blue king crab.
923	Gold/brown king crab.
930	Unspecified tanner crab.
931	Bairdi tanner crab.
932	Opilio tanner crab.

TABLE 3.—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES REFERENCED IN 50 CFR 672.20(a)(1) AND/OR 50 CFR 675.20(a)(1)

FMP species	Species code	Product code											
		Whole food fish	Whole bait fish	Bled	Gutted	H&G with roe	H&G western cut	H&G eastern cut	H&G w/o tail	Kirimi	Salted & split	Wings	Roe
		1	2	3	4	6	7	8	10	11	12	13	14
PACIFIC CODE	110	1.00	1.00	0.98	0.85	0.63	0.57	0.47	0.44	.....	0.45	.....	0.05
ARROWTOOTH FLOUNDER	121	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
ROCKFISH[1]	.....	1.00	1.00	0.98	0.88	.....	0.60	0.50	.....	.....	.....	.....	.....
SCULPINS	160	1.00	1.00	0.98	0.87	.....	0.50	0.40	.....	.....	.....	.....	.....
ATKA MACKEREL	193	1.00	1.00	0.98	0.87	0.67	0.64	0.61	.....	.....	.....	.....	.....
POLLOCK	270	1.00	1.00	0.98	0.80	0.70	0.65	0.56	0.50	.....	.....	.....	0.04
SMELTS	510	1.00	1.00	0.98	0.82	.....	0.71	.....	.....	.....	.....	.....	.....
EULACHON	511	1.00	1.00	0.98	0.82	.....	0.71	.....	.....	.....	.....	.....	.....
CAPELIN	516	1.00	1.00	0.98	0.89	.....	0.78	.....	.....	.....	.....	.....	.....
SHARKS	689	1.00	1.00	0.98	0.83	.....	0.72	.....	.....	.....	.....	.....	.....
SKATES	700	1.00	1.00	0.98	0.90	.....	.....	0.32	.....	.....	.....	0.32	.....
SABLEFISH	710	1.00	1.00	0.98	0.89	0.68	0.63	0.50	.....	.....	.....	.....	.....
OCTOPUS	870	1.00	1.00	0.98	0.69	.....	.....	.....	.....	.....	.....	.....	.....
Target species categories only at 50 CFR 672.20(a):													
DEEP WATER FLATFISH	118	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
FLATHEAD SOLE	122	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
REX SOLE	125	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
SHALLOW WATER FLATFISH	119	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
THORNYHEAD ROCKFISH	143	1.00	1.00	0.98	0.88	0.55	0.60	0.50	.....	.....	.....	.....	.....
Target species categories only at 50 CFR 675.20(a):													
OTHER FLATFISH	120	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
ROCK SOLE	123	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
YELLOWFIN SOLE	127	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08

TABLE 3.—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES REFERENCED IN 50 CFR 672.20(a)(1) AND/OR 50 CFR 675.20(a)(1)—Continued

FMP species	Species code	Product code											
		Whole food fish	Whole bait fish	Bled	Gutted	H&G with roe	H&G western cut	H&G eastern cut	H&G w/o tail	Kirimi	Salted & split	Wings	Roe
		1	2	3	4	6	7	8	10	11	12	13	14
GREENLAND TURBOT	134	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
SQUID	875	1.00	1.00	0.98	0.69	.....	.....	.....	.....	.....	.....	.....	.....

FMP species	Species code	Product code												
		Pectroal girdle	Heads	Cheeks	Chins	Belly	Fillets w/skin & ribs	Fillets skin on no ribs	Fillets w/ribs no skin	Fillets skinless/ boneless	Fillets deep skin	Surimi	Mince	Meal
		15	16	17	18	19	20	21	22	23	24	30	31	32
PACIFIC COD	110	0.05	.....	0.05	.....	0.01	0.45	0.35	0.25	0.25	.....	0.15	0.5	0.17
ARROWTOOTH FLOUNDER	121	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
ROCKFISH	.....	.....	0.15	0.05	0.05	0.10	0.40	0.30	0.33	0.25	.....	.....	.....	0.17
SCULPINS	160	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.17
ATKA MACKEREL	193	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.15	.....	0.17
POLLOCK	270	.....	0.15	.....	.....	.....	.....	0.35	0.30	0.30	0.21	[2]0.16	0.22	0.17
SMELTS	510	.....	.....	.....	.....	.....	.....	0.38	.....	.....	.....	[3]0.17	.....	0.22
EULACHON	511	.....	.....	.....	.....	.....	.....	0.38	.....	.....	.....	.....	.....	0.22
CAPELIN	516	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.22
SHARKS	689	.....	.....	.....	.....	.....	.....	0.30	0.30	0.25	.....	.....	.....	0.17
SKATES	700	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.17
SABLEFISH	710	.....	.....	0.05	.....	.....	0.35	0.30	0.30	0.25	.....	.....	.....	0.22
OCTOPUS	870	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.17
Target species categories only at 50 CFR 672(a):														
DEEP WATER FLATFISH	118	.....	.....	.....	.....	.....	0.32	0.27	.....	0.22	.....	.....	.....	0.17
FLATHEAD SOLE	122	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
REX SOLE	125	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
SHALLOW WATER FLATFISH	119	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
THORNYHEAD ROCKFISH	143	.....	0.20	0.05	0.05	0.05	0.40	0.30	0.35	0.25	.....	.....	.....	0.17
Target species categories only at 50 CFR 675.20(a):														
OTHER FLATFISH	120	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
ROCK SOLE	123	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
YELLOWFIN SOLE	127	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	0.18	.....	0.17
GREENLAND TURBOT	134	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
SQUID	875	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.17

FMP species	Product code	Species code						
		Oil	Milt	Stomachs	Mantles	Butterfly backbone removed	Decomposed fish	Discards
		33	34	35	36	37	96	92, 94, 98, 99, M99
PACIFIC COD	110	.....	.....	.....	.....	0.43	0.00	1.00
ARROWTOOTH FLOUNDER	121	.....	.....	.....	.....	.....	0.00	1.00
ROCKFISH	.....	.....	.....	.....	.....	.....	0.00	1.00
SCULPINS	160	.....	.....	.....	.....	.....	0.00	1.00
ATKA MACKEREL	193	.....	.....	.....	.....	.....	0.00	1.00
POLLOCK	270	.....	.....	.....	.....	0.43	0.00	1.00
SMELTS	510	.....	.....	.....	.....	.....	0.00	1.00
EULACHON	511	.....	.....	.....	.....	.....	0.00	1.00
CAPELIN	516	.....	.....	.....	.....	.....	0.00	1.00
SHARKS	689	.....	.....	.....	.....	.....	0.00	1.00
SKATES	700	.....	.....	.....	.....	.....	0.00	1.00
SABLEFISH	710	.....	.....	.....	.....	.....	0.00	1.00
OCTOPUS	870	.....	.....	.....	0.85	1.00	0.00	1.00
Target species categories only at 50 CFR 672.20(a):								
DEEP WATER FLATFISH	118	.....	.....	.....	.....	.....	0.00	1.00
FLATHEAD SOLE	122	.....	.....	.....	.....	.....	0.00	1.00
REX SOLE	125	.....	.....	.....	.....	.....	0.00	1.00
SHALLOW WATER FLATFISH	119	.....	.....	.....	.....	.....	0.00	1.00
THORNYEAD ROCKFISH	143	.....	.....	.....	.....	.....	0.00	1.00
Target species categories only at 50 CFR 675.20(a):								

FMP species	Product code	Species code						
		Oil	Milt	Stom-achs	Mantles	Butterfly back-bone re-moved	Decom-posed fish	Discards
		33	34	35	36	37	96	92, 94, 98, 99, M99
OTHER FLATFISH	120	.....	.....	.....	.....	.....	0.00	1.00
ROCK SOLE	123	.....	.....	.....	.....	.....	0.00	1.00
YELLOWFIN SOLE	127	.....	.....	.....	.....	.....	0.00	1.00
GREENLAND TURBOT	134	.....	.....	.....	.....	.....	0.00	1.00
SQUID	875	.....	.....	.....	0.75	1.00	0.00	1.00

[1] Rockfish means all species of *Sebastes,* and *Sebastolobus.*
[2] Standard pollock surimi rate during January through June.
[3] Standard pollock surimi rate during July through December.

TABLE 4.—BERING SEA SUBAREA STELLER SEA LION PROTECTION AREAS

Island	From		To	
	Latitude	Longitude	Latitude	Longitude
3-nm NO TRANSIT ZONES described at 50 CFR 227.12(a)(2)				
a. Year-round Trawl Closures (Trawling Prohibited Within 10 nm)				
Sea Lion Rocks	55°28.0′ N	163°12.0′ W		
Ugamak Island	54°14.0′ N	164°48.0′ W	54°13.0′ N	164°48.0′ W
Akun Island	54°18.0′ N	165°32.5′ W	54°18.0′ N	165°31.5′ W
Akutan Island	54°03.5′ N	166°00.0′ W	54°.05.5′ N	166°05.0′ W
Bogoslof Island	53°56.0′ N	168°02.0′ W		
Ogchul Island	53°00.0′ N	168°24.0′ W		
Adugak Island	52°55.0′ N	169°10.5′ W		
Walrus Island	57°11.0′ N	169°56.0′ W		
b. Seasonal Trawl Closures (During January 1 through April 15, or a date earlier than April 15, if adjusted under 50 CFR 672.30(a)(8), Trawling Prohibited Within 20 nm)				
Sea Lion Rocks	55°28.0′ N	163°12.0′ W		
Akun Island	54°18.0′ N	165°32.5′ W	54°18.0′ N	165°31.5′ W
Akutan Island	54°03.5′ N	166°00.0′ W	54°05.5′ N	166°05.0′ W
Ugamak Island	54°14.0′ N	164°48.0′ W	54°13.0′ N	164°48.0′ W
Seguam Island	52°21.0′ N	172°35.0′ W	52°21.0′ N	172°33.0′ W
Agligadak Island	52°06.5′ N	172°54.0′ W		

Note: The bounds of each rookery extend in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

TABLE 5.—ALEUTIAN ISLANDS SUBAREA STELLER SEA LION PROTECTION AREAS

Island	From		To	
	Latitude	Longitude	Latitude	Longitude
3-nm NO TRANSIT ZONES described at 50 CFR 227.12(a)(2)				
a. Year-round Trawl Closures (Trawling Prohibited Within 10 nm)				
Yunaska Island	52°42.0′ N	170°38.5′ W	52°41.0′ N	170°34.5′ W
Seguam Island	52°21.0′ N	172°35.0′ W	52°21.0′ N	172°33.0′ W
Agligadak Island	52°06.5′ N	172°54.0′ W		
Kasatochi Island	52°10.0′ N	175°31.0′ W	52°10.5′ N	175°29.0′ W
Adak Island	51°36.5′ N	176°59.0′ W	51°38.0′ N	176°59.5′ W
Gramp Rock	51°29.0′ N	178°20.5′ W		
Tag Island	51°33.5′ N	178°34.5′ W		
Ulak Island	51°20.0′ N	178°57.0′ W	51°18.5′ N	178°59.5′ W
Semisopochnoi	51°58.5′ N	179°45.5′ E	51°57.0′ N	179°46.0′ E
Semisopochnoi	52°01.5′ N	179°37.5′ E	52°01.5′ N	179°39.0′ E
Amchitka Island	51°22.5′ N	179°28.0′ E	51°21.5′ N	179°25.0′ E
Amchitka Is/Column Rocks	51°32.5′ N	178°49.5′ E		
Ayugadak Point	51°45.5′ N	178°24.5′ E		
Kiska Island	51°57.5′ N	177°21.0′ E	51°56.5′ N	177°20.0′ E
Kiska Island	51°52.5′ N	177°13.0′ E	51°53.5′ N	177°12.0′ E

TABLE 5.—ALEUTIAN ISLANDS SUBAREA STELLER SEA LION PROTECTION AREAS—Continued

Island	From		To	
	Latitude	Longitude	Latitude	Longitude
Buldir Island	52°20.5′ N	175°57.0′ E	52°23.5′ N	175°51.0′ E
Agattu Is./Gillion Pt	52°24.0′ N	173°21.5′ E		
Agattu Island	52°23.5′ N	173°43.5′ EW	52°22.0′ N	173°41.0′ E
Attu Island	52°54.5′ N	172°28.5′ E	52°57.5′ N	172°31.5′ E
b. Seasonal Trawl Closures (During January 1 through April 15, or a date earlier than April 15, if adjusted under 50 CFR 675.20(a)(8). Trawling Prohibited Within 20 nm)				
Seguam Island	52°21.0′ M	172°35.0′ W	52°21.0′ N	172°33.0′ W
Agligadak Island	52°06.5′ N	172°54.0′ W		

Note: Each rookery extends in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

TABLE 6.—GULF OF ALASKA STELLER SEA LION PROTECTION AREAS

Island	From		To	
	Latitute	Longitude	Latitude	Longitude
3-nm NO TRANSIT ZONES described at 50 CFR 227.12(a)(2)				
a. Year-round Trawl Closures (Trawling Prohibited Within 10 nm)				
Outer Island	59°20.5′ N	150°23.0′ W	59°21.0′ N	150°24.5′ W
Sugarload Island	58°53.0′ N	152°02.0′ W		
Marmot Island	58°14.5′ N	151°47.5′ W	58°10.0′ N	151°51.0′ W
Chirikof Island	55°46.5′ N	155°39.5′ W	55°46.5′ N	155°43.0′ W
Chowiet Island	56°00.5′ N	156°41.5′ W	56°00.5′ N	156°42.0′ W
Atkins Island	55°03.5′ N	159°18.5′ W		
Chernabura Island	54°47.5′ N	159°31.0′ W	54°45.5′ N	159°33.5′ W
Pinnacle Rock	54°46.0′ N	161°46.0′ W		
Clubbing Rocks-N	54°43.0′ N	162°26.5′ W		
Clubbing Rocks-S	54°42.0′ N	162°26.5′ W		
Ugamak Island	54°14.0′ N	164°48.0′ E	54°13.0′ N	164°48.0′ W
Akun Island	54°18.0′ N	165°32.5′ W	54°18.0′ N	165°31.5′ W
Akutan Island	54°03.5′ N	166°00.0′ W	54°05.5′ N	166°05.0′ W
Ogchul Island	53°00.0′ N	168°24.0′ W		
b. Seasonal Trawl Closures (During January 1 through April 15, or a date earlier than April 15, if adjusted under 50 CFR 672.30(a)(8). Trawling Prohibited Within 20 mn)				
Akun I	54°18.0′ N	165°32.5′ W	54°18.0′ N	165°31.5′ W
Akutan I	54°03.5′ N	166°00.0′ W	54°05.5′ N	166°05.0′ W
Ugamak I	54°14.0′ N	164°48.0′ W	54°13.0′ N	164°48.0′ W

Note: The bounds of each rookery extend in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

TABLE 7.—COMMUNITIES DETERMINED TO BE ELIGIBLE TO APPLY FOR COMMUNITY DEVELOPMENT QUOTAS

[Other communities may also be eligible, but do not appear on this table.]

Aleutian Region:
1. Atka.
2. False Pass.
3. Nelson Lagoon.
4. Nikolski.
5. St. George.
6. St. Paul.

Bering Strait:
1. Brevig Mission.
2. Diomede/Inalik.
3. Elim.
4. Gambell.
5. Golovin.
6. Koyuk.
7. Nome.
8. Savoonga.
9. Shaktoolik.
10. St. Michael.
11. Stebbins.
12. Teller.
13. Unalakleet.
14. Wales.
15. White Mountain.

Bristol Bay:
1. Alegnagik.
2. Clark's Point.
3. Dillingham.
4. Egegik.
5. Ekuk.
6. Manokotak.
7. Naknek.
8. Pilot Point/Ugashi.
9. Port Heiden/Meschick.
10. South Naknek.
11. Sovonoski/King Salmon.
12. Togiak.
13. Twin Hills.

Southwest Coastal Lowlands:
1. Alakanuk.
2. Chefornak.
3. Chevak.
4. Eek.
5. Emmonak.
6. Goodnews Bay.
7. Hooper Bay.
8. Kipnuk.
9. Kongiganak.
10. Kotlik.
11. Kwigillingok.
12. Mekoryuk.
13. Newtok.
14. Nightmute.
15. Platinum.
16. Quinhagak.
17. Scammon Bay.
18. Sheldon's Point.
19. Toksook Bay.
20. Tununak.
21. Tuntutuliak.

TABLE 8.—HARVEST ZONE CODES FOR USE WITH PRODUCT TRANSFER REPORTS AND VESSEL ACTIVITY REPORTS

Harvest zone	Description
A	EEZ of Alaska.
D	Donut Hole.
F	Foreign Waters Other than Russia.
I	International Waters other than Donut Hole and Seamounts.
R	Russian waters.
S	Seamounts in International waters.
U	U.S. EEZ other than Alaska.

TABLE 9.—REQUIRED LOGBOOKS, REPORTS AND FORMS FROM PARTICIPANTS IN THE FEDERAL GROUNDFISH FISHERIES

Name of logbook form	Catcher-vessel	Catcher-processor	Mothership	Shoreside processor	Buying station
Daily Fishing Logbook (DFL)	YES	NO	NO	NO	NO
Daily Cumulative Production Logbook (DCPL)	NO	YES	YES	YES	NO
Daily Cumulative Logbook (DCL)	NO	NO	NO	NO	YES
Check-in/check-out Report	NO	YES	YES	YES	YES
U.S. Vessel Activity Report (VAR)	YES	YES	YES	NO	NO
Weekly Production Report (WPR)	NO	YES	YES	YES	NO
Daily Production Report (DPR) [1]	NO	YES	YES	YES	NO
Product Transfer Report (PTR)	NO	YES	YES	YES	NO

[1] When required by Regional Director.

TABLE 10.—GULF OF ALASKA RETAINABLE PERCENTAGES REFERENCED IN 50 CFR 672.20

Basis species [1]	Bycatch species [1]											
	Pollock	Pacific cod	Deep flatfish	Rex sole	Flathead sole	Shallow flatfish	Arrowtooth	Sablefish	Aggregated rockfish [2]	DSR SEEO [3]	Atka mackerel	Other species
Pollock	[4] na	20	20	20	20	20	35	1	5	10	20	20
Pacific cod	20	[4] na	20	20	20	20	35	1	5	10	20	20
Deep-water flatfish	20	20	[4] na	20	20	20	35	15	15	1	20	20
Rex sole	20	20	20	[4] na	20	20	35	15	15	1	20	20
Flathead sole	20	20	20	20	20	[4] na	35	1	5	10	20	20
Shallow-water flatfish	20	20	20	20	20	[4] na	35	1	5	10	20	20
Arrowtooth	0	0	0	0	0	0	[4] na	0	0	0	0	0
Sablefish	20	20	20	20	20	20	35	[4] na	15	1	20	20
Pacific Ocean Perch	20	20	20	20	20	20	35	15	15	1	20	20
Shortraker/rougheye	20	20	20	20	20	20	35	15	15	1	20	20
Other rockfish	20	20	20	20	20	20	35	15	15	1	20	20
Northern rockfish	20	20	20	20	20	20	35	15	15	1	20	20
Pelagic rockfish	20	20	20	20	20	20	35	15	15	1	20	20
DSR-Southeast Outside	20	20	20	20	20	20	35	15	15	[4] na	20	20
Thornyhead	20	20	20	20	20	20	35	15	15	1	20	20
Atka mackerel	20	20	20	20	20	20	35	1	5	10	[4] na	20
Other species	20	20	20	20	20	20	35	1	5	10	20	[4] na
Aggregated amount non-groundfish species	20	20	20	20	20	20	35	1	5	10	20	20

[1] For definition of species, see Table 1 of the Gulf of Alaska groundfish specifications.
[2] Aggregated rockfish means rockfish of the general Sebastes and Sebastolobus except in the southeast Outside District where demersal shelf rockfish (DSR) is a separate category.
[3] SEEO—Southeast Outside District.
[4] na = not applicable.

TABLE 11.—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES REFERENCED IN 50 CFR 675.20

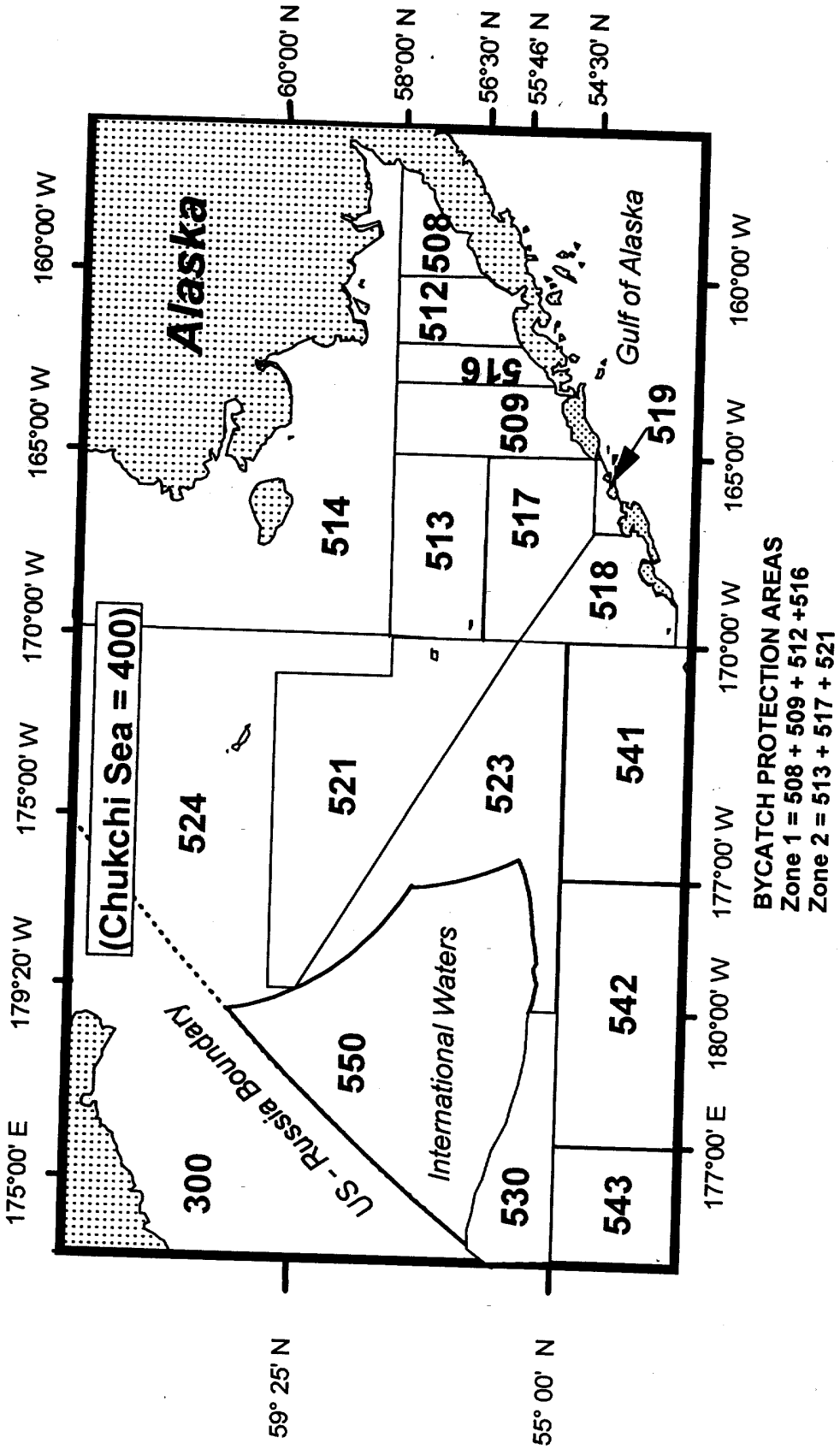
Basis Species [1]	Bycatch species [1]												
	Pollock	Pacific cod	Atka mackerel	Arrowtooth	Yellowfin sole	Other flatfish	Rock sole	Flathead sole	Greenland turbot	Sablefish	Aggregated rockfish [2]	Squid	Other species
Pollock	[3] na	20	20	35	20	20	20	20	1	1	5	20	20
Pacific cod	20	[3] na	20	35	20	20	20	20	1	1	5	20	20
Atka Mackerel	20	20	[3] na	35	20	20	20	20	1	1	5	20	20
Arrowtooth	0	0	0	[3] na	0	0	0	0	0	0	0	0	0
Yellowfin sole	20	20	20	35	[3] na	35	35	35	1	1	5	20	20
Other flatfish	20	20	20	35	35	[3] na	35	35	1	1	5	20	20
Rocksole	20	20	20	35	35	35	[3] na	35	1	1	5	20	20
Flathead sole	20	20	20	35	35	35	35	[3] na	35	15	15	20	20
Greenland turbot	20	20	20	35	20	20	20	20	[3] na	15	15	20	20
Sablefish	20	20	20	35	20	20	20	20	35	[3] na	15	20	20
Other rockfish	20	20	20	35	20	20	20	20	35	15	15	20	20
Other red rockfish-BS	20	20	20	35	20	20	20	20	35	15	15	20	20
Pacific Ocean perch	20	20	20	35	20	20	20	20	5	15	15	20	20
Sharpchin/Northern-AI	20	20	20	35	20	20	20	20	35	15	15	20	20
Shortraker/Rougheye-AI	20	20	20	35	20	20	20	20	35	15	15	20	20
Squid	20	20	20	35	20	20	20	20	1	1	5	[3] na	20
Other species	20	20	20	35	20	20	20	20	1	1	5	20	[3] na
Aggregated amount non-groundfish species	20	20	20	35	20	20	20	20	1	1	5	20	20

[1] For definition of species, see Table 1 of the Bering Sea and Aleutian islands groundfish specifications.
[2] Aggregated rockfish of the genera Sebastes and Sebastolobus.
[3] na=not applicable.

12. Part 672 is amended by revising the figures to the part to read as follows:

FIGURES—PART 672

BILLING CODE 6560–50–P



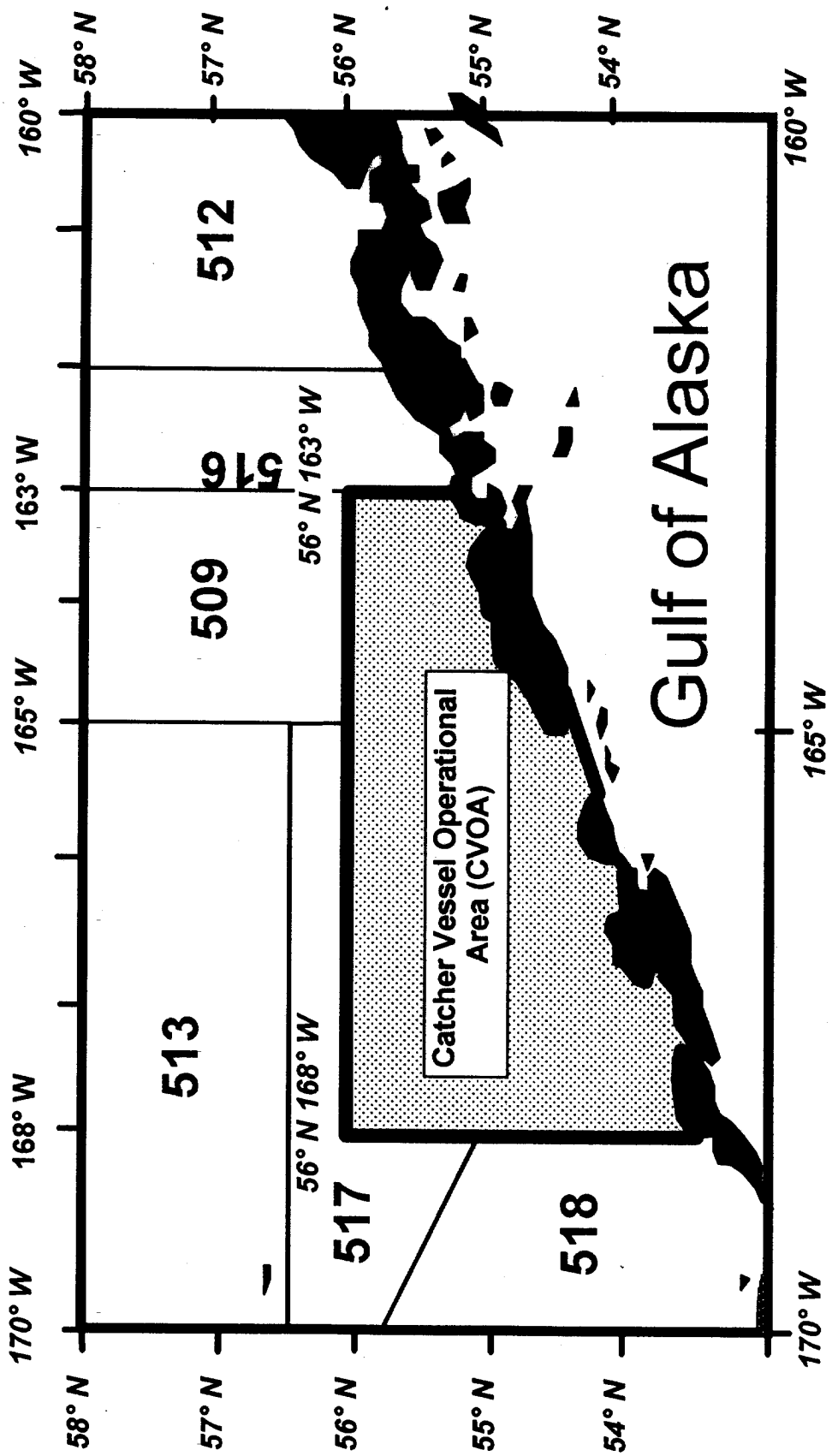
BSAI Statistical and Reporting Areas Map

Figure 1a—BSAI Statistical and Reporting Areas; Map

FIGURE 1B.—BSAI STATISTICAL AND REPORTING AREAS; COORDINATES OF REPORTING AREAS

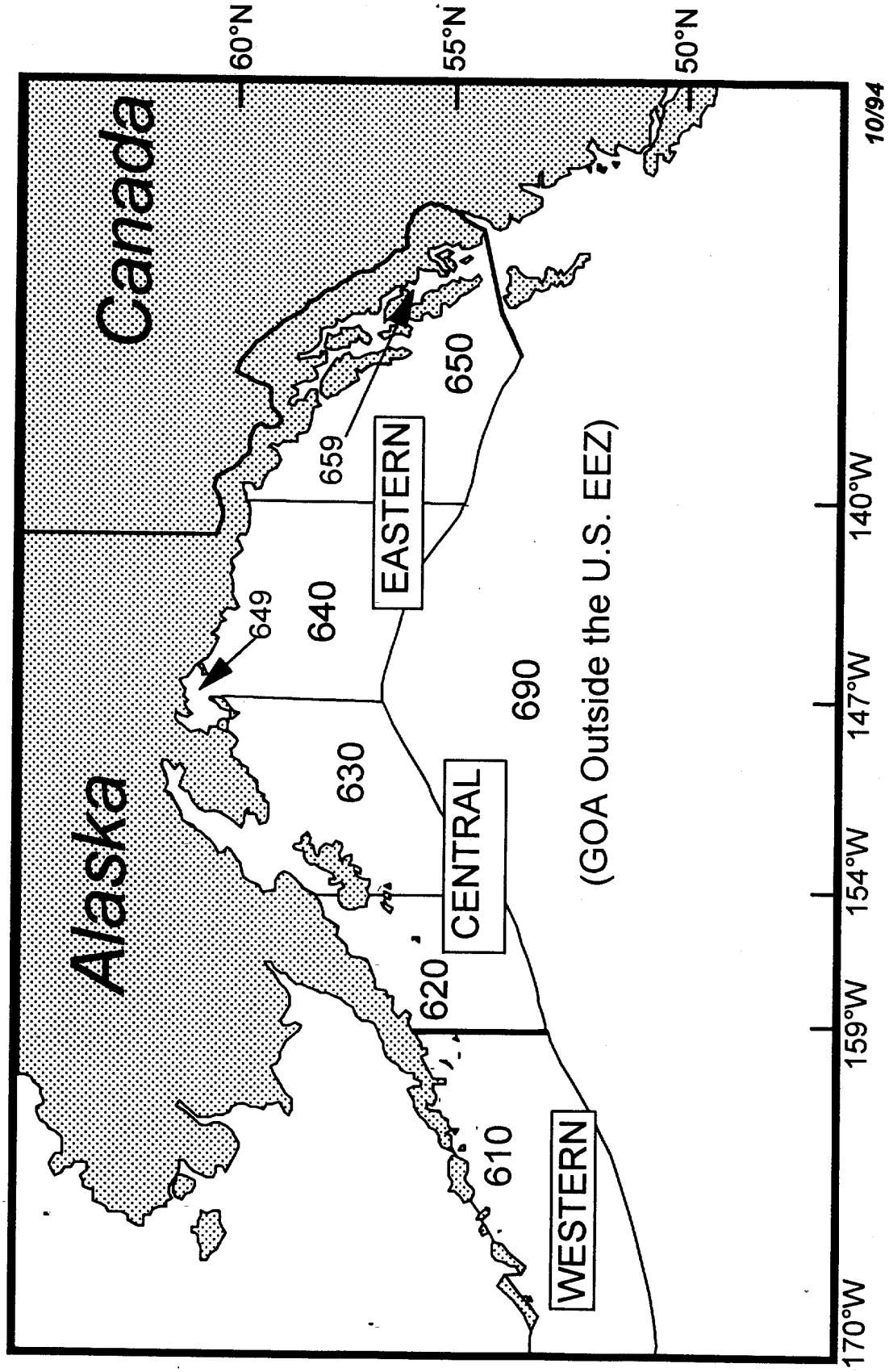
Code	Description
300	*Russian waters.* Those waters inside the Russian 200 mile limit as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart INT 814 Bering Sea (Northern Part).
400	*Chukchi Sea.* North of a diagonal line between 66°00′ N, 169°42.5′ W (Cape Dezhneva, Russia); and 65°37′ N, 168°7.5° W (Cape Prince of Wales, Alaska) and to the limits of the U.S. EEZ as described in the current edition of NOAA chart INT 814 Bering Sea (Northern Part).
508	South of 58°00′ N between the intersection of 58°00′ North lat with the Alaska Peninsula and 160°00′ W long.
509	South of 58°00′ N lat between 163°00′ W long and 165°00′ W long.
512	South of 58°00′ N lat, north of the Alaska Peninsula between 160°00′ W long and 162°00′ W long.
513	Between 58°00′ N lat and 56°30′ N. lat, and between 165°00′ W long and 170°00′ W long.
514	North of 58°00′ N to the southern boundary of the Chukchi Sea, area 400, and east of 170°00′ W long.
516	South of 58°00′ N lat, north of the Alaska Peninsula, and between 162°00′ and 163°00′ W long.
517	South of 56°30′ N lat, between 165°00′ W long and 170°00′ W long; and north of straight lines between: 54°30′ N lat, 165°00′ W long, 54°30′ N lat, 167°00′ W long, and 55°46′ N lat, 170°00′ W long.
518	*Bogoslof District:* South of a straight line between 55°46′ N lat, 170°00′ W long and 54°30′ N lat, 167°00′ W long, and between 167°00′ W long and 170°00′ W long, and north of the Aleutian Island and straight lines between the islands connecting the following coordinates in the order listed: 52°49.2′ N, 169°40.4′ W. 52°49.8′ N, 169°06.3′ W. 53°23.8′ N, 167°50.1′ W. 53°18.7′ N, 167°51.4′ W.
519	South of a straight line between 54°30′ N lat, 167°00′ W long and 54°30′ N lat, 164°54′ W long; east of 167°00′ W long; west of Unimak Island; and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed: 53°59.0′ N, 166°17.2′ W. 54°02.9′ N, 166°03.0′ W. 54°07.7′ N, 165°40.6′ W. 54°08.9′ N, 165°38.8′ W. 54°11.9′ N, 165°23.3′ W. 54°23.9′ N, 164°42.0′ W.
521	The area bounded by straight lines connecting the following coordinates in the order listed: 55°46′ N, 170°00′ W, 59°25′ N, 179°20′ W, 60°00′ N, 179°20′ W, 60°00′ N, 171°00′ W, 58°00′ N, 171°00′ W, 58°00′ N, 170°00′ W, 55°46′ N, 170°00′ W,
523	The area bounded by straight lines connecting the following coordinates in the order listed: 59°25′ N, 179°20′ W; 55°46′ N, 170°00′ W; 55°00′ N, 170°00′ W; 55°00′ N, 180°00′ W; and north to the limits of the US EEZ as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part).
524	The area west of 170°00′ W bounded south by straight lines connecting the following coordinates in the order listed: 58°00′ N, 170°00′ W 58°00′ N, 171°00′ W; 60°00′ N, 171°00′ W; 60°00′ N, 179°20′ W; 59°25′ N, 179°20′ W and to the limits of the US EEZ as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part).
530	The area north of 55°00′ N lat and west of 180°00′ W long to the limits of the US EEZ as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part)
541	*Eastern Aleutian District.* The area south of 55°00′ N lat, west of 170°00′ W long, and east of 177°00′ W long and bounded on the south by the limits of the US EEZ as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart 530 (San Diego to Aleutian Islands and Hawaiian Islands).
542	*Central Aleutian District.* The area south of 55°00′ N lat, west of 177°00′ W long, and east of 177°00′ E long and bounded on the south by the limits of the US EEZ as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart 530 (San Diego to Aleutian Islands and Hawaiian Islands)
543	*Western Aleutian district.* The area south of 55°00′ N lat and west of 177°00′ E long, and bounded on the south and west by the limits of the US EEZ as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart 530 (San Diego to Aleutian Islands and Hawaiian Islands)
550	*Donut Hole.* International waters of the Bering Sea outside the limits of the EEZ and Russian economic zone as depicted on the current edition of NOAA chart INT 813 Bering Sea (Southern Part).
	Statistical Area. A statistical area is the part of a reporting area contained in the EEZ.

BILLING CODE 6560–50–P



BSAI Catcher Vessel Operational Area

Figure 2—BSAI Catcher Vessel Operational Area



Gulf of Alaska Statistical and Reporting Areas
Map

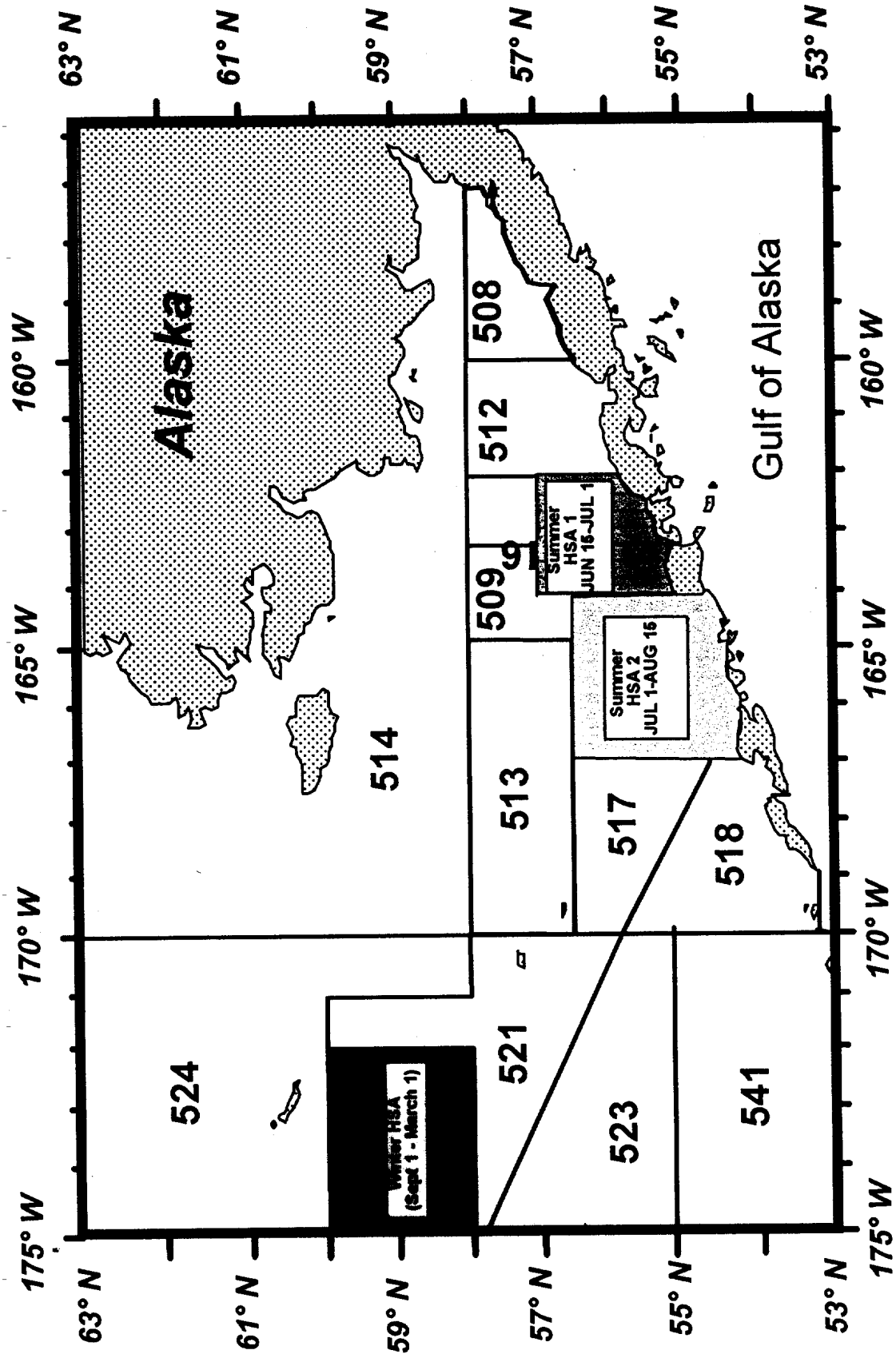
Figure 3a—Gulf of Alaska Statistical and Reporting Areas; Map

BILLING CODE 6560–50–C

FIGURE 3B.—GULF OF ALASKA STATISTICAL AND REPORTING AREAS; COORDINATES OF REPORTING AREAS

Code	Description
610	*Western Regulatory Area, Shumagin District.* Along the south side of the Aleutian Islands and straight lines between the islands and the Alaska Peninsula connecting the following coordinates in the order listed: 52°49.2′ N, 169°40.4′ W; 52°49.8′ N, 169°06.3′ W; 53°23.8′ N, 167°50.1′ W; 53°18.7′ N, 167°51.4′ W; 53°59.0′ N, 166°17.2′ W; 54°02.9′ N, 166°03.0′ W; 54°07.7′ N, 165°40.6′ W; 54°08.9′ N, 165°38.8′ W; 54°11.9′ N, 165°23.3′ W; 54°23.9′ N, 164°44.0′ W; and southward to the limits of the US EEZ as described in the current editions of NOAA chart INT 813 (Bering Sea, Southern Part) and NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass), between 170°00′ W long and 159°00′ W long.
620	*Central Regulatory Area, Chirikof District.* Along the south side of the Alaska Peninsula, between 159°00′ W long and 154°00′ W long, and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass).
630	*Central Regulatory Area, Kodiak District.* Along the south side of continental Alaska, between 154°00′ W long and 147°00′ W long, and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 649.
640	*Eastern Regulatory Area, West Yakutat District.* Along the south side of continental Alaska, between 147°00′ W long and 140°00′ W long, and southward to the limits of the US EEZ, as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 649.
649	*Prince William Sound.* Includes those waters of the State of Alaska inside the base line as specified in Alaska State regulations at 5 AAC 28.200.
650	*Eastern Regulatory Area, Southeast Outside District.* East of 140°00′ W long and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 659.
659	*Southeast Inside District.* As specified in Alaska State regulations at 5 AAC 28.105 (a)(1) and (2).
690	*Gulf of Alaska outside the U.S. EEZ* as described in the current editions of NOAA chart INT 813 (Bering Sea, Southern Part) and NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass).
	Statistical Area. A statistical area is the part of a reporting area contained in the EEZ.

BILLING CODE 6560–50–P



Herring Savings Areas in the BSAI Map

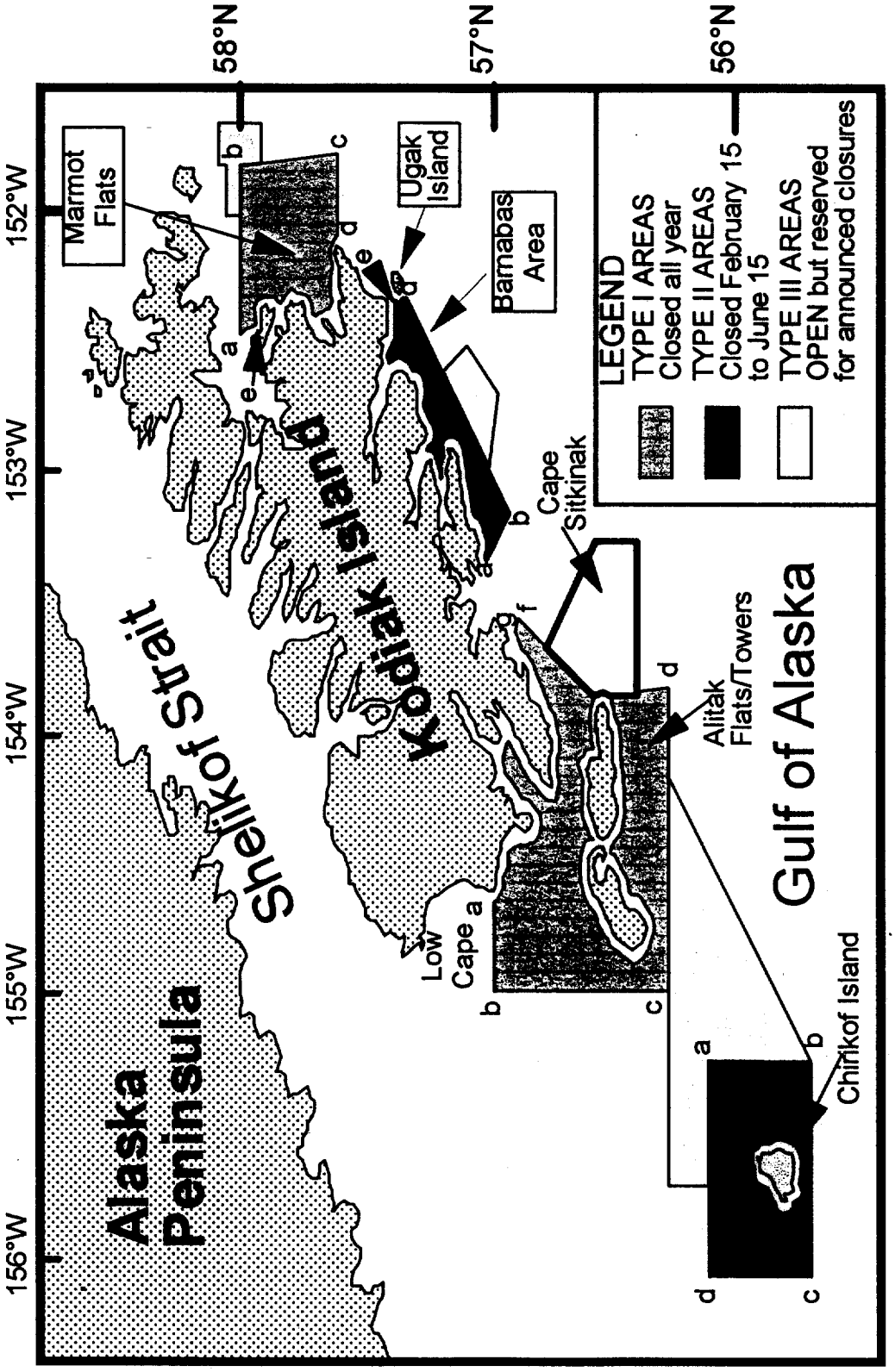
Figure 4a—Herring Savings Areas in the BSAI; Map

BILLING CODE 6560–50–C

FIGURE 4B.—HERRING SAVINGS AREAS IN THE BSAI; COORDINATES

Name	Description and effective date
Summer Herring Savings Area 1	That part of the Bering Sea subarea that is south of 57° N. latitude and between 162° and 164° W. longitude from 1200 hours, A.l.t., June 15 through 1200 hours, A.l.t. July 1 of a fishing year.
Summer Herring Savings Area 2	That part of the Bering Sea subarea that is south of 56°30′ N. latitude and between 164° and 167° W. longitude from 1200 hours, A.l.t., July 1 through 1200 hours, A.l.t. August 15 of a fishing year.
Winter Herring Savings Area	That part of the Bering Sea subarea that is between 58° and 60° N. latitude and between 172° and 175° W. longitude from 1200 hours, A.l.t., September 1 of the current fishing year through 1200 hours, A.l.t. March 1 of the succeeding fishing year.

BILLING CODE 6560–50–P



Kodiak Island Areas Closed to Non-pelagic Trawl Gear Map

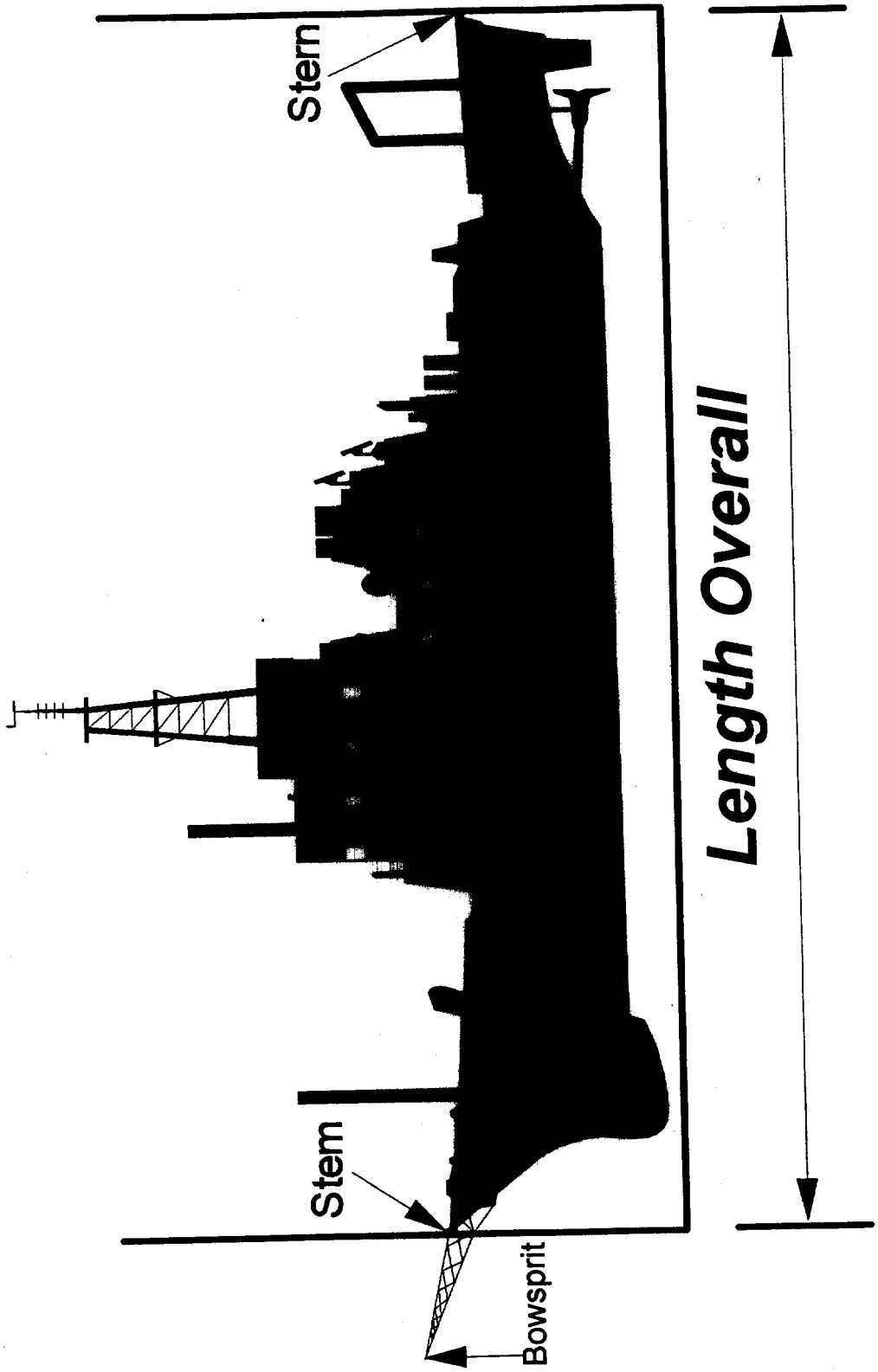
Figure 5a—Kodiak Island Areas Closed to Non-pelagic Trawl Gear; Map

BILLING CODE 6560–50–C

FIGURE 5B—KODIAK ISLAND AREAS CLOSED TO NON-PELAGIC TRAWL GEAR; COORDINATES

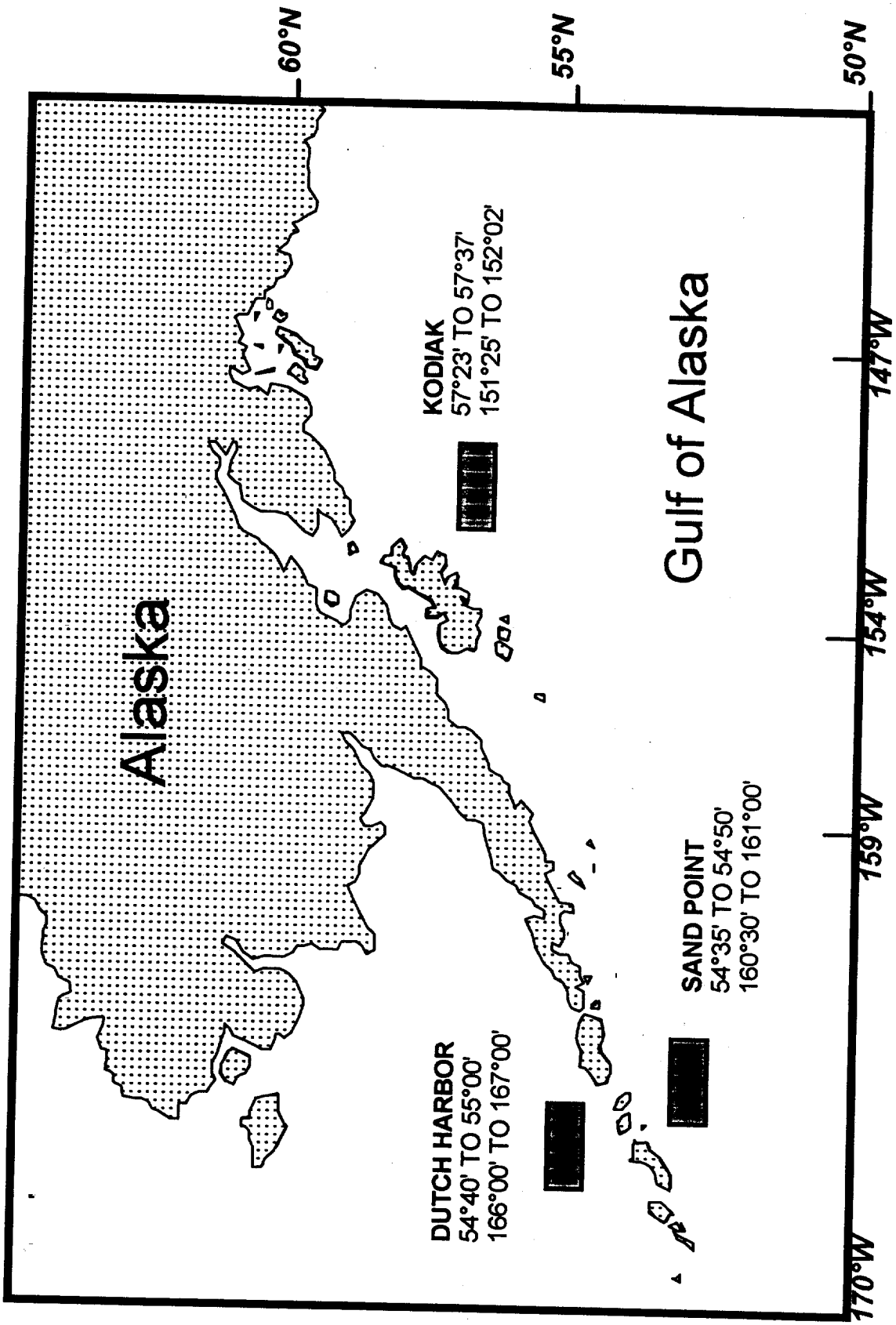
Name and description of reference area	North latitude/West longitude	Reference point
Alitak Flats and Towers Areas—All waters of Alitak Flats and the Towers Areas enclosed by a line connecting the following 7 points in the order listed:		
a	56°59′4″ 154°31′1″	Low Cape.
b	57°00′0″ 155°00′0″	
c	56°17′0″ 155°00′0″	
d	56°17′0″ 153°52′0″	
e	56°33′5″ 153°52′0″	Cape Sitkinak.
f	56°54′5″ 153°32′5″	East point of Twoheaded Island.
g	56°56′0″ 153°35′5″	Kodiak Island, thence, along the coastline of Kodiak Island until intersection of Low Cape.
a	56°59′4″ 154°31′1″	Low Cape.
Marmot Flats Area—All waters enclosed by a line connecting the following five points in the clockwise order listed:		
a	58°00′0″ 152°30′0″	
b	58°00′0″ 151°47′0″	
c	57°37′0″ 151°47′0″	
d	57°37′0″ 152°10′1″	Cape Chiniak, then along the coastline of Kodiak Island to North Cape.
e	57°54′5″ 152°30′0″	
a	58°00′0″ 152°30′0″	
Chirikof Island Area—All waters surrounding Chirikof Island enclosed by a line connecting the following four points in the counter-clockwise order listed:		
a	56°07′0″ 155°13′0″	
b	56°07′0″ 156°00′0″	
c	55°41′0″ 156°00′0″	
d	55°41′0″ 155°13′0″	
a	56°07′0″ 155°13′0″	
Barnabas Area—All waters enclosed by a line connecting the following six points in the counter clockwise order listed:		
a	57°00′0″ 153°18′0″	Black Point.
b	56°56′0″ 153°09′0″	
c	57°22′0″ 152°18′5″	South Tip of Ugak Island.
d	57°23′5″ 152°17′5″	North Tip of Ugak Island.
e	57°25′3″ 152°20′0″	Narrow Cape, thence, along the coastline of Kodiak Island.
f	57°04′2″ 153°30′0″	Cape Kasick to.
a	57°00′0″ 153°18′0″	Black Point, including inshore waters.

BILLING CODE 6560–50–P



Length Overall of a Vessel

Figure 6—Length Overall of a Vessel



Location of trawl gear test areas in the GOA and the BSAI

Figure 7—Location of Trawl Gear Test Areas in the GOA and the BSAI

BILLING CODE 6560–50–C

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

13. The authority citation for part 675 continues to read as follows:

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

Subpart A—General

14. In § 675.1, paragraph (a) is revised to read as follows:

§ 675.1 Purpose and scope.

(a) Regulations in this part, along with parts 620, 672, 676, and 677 of this chapter implement the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area.

* * * * *

15. Section 675.2 is revised to read as follows:

§ 675.2 Definitions.

Definitions for this section are located in § 672.2 of this chapter.

16. Section 675.3 is revised to read as follows:

§ 675.3 Relation to other laws.

Regulations for this section are located in § 672.3 of this chapter.

17. Section 675.4 is revised to read as follows:

§ 675.4 Permits.

Fisheries permit requirements for vessels fishing for groundfish in the BSAI are located at § 672.4 of this chapter.

18. Section 675.5 is revised to read as follows:

§ 675.5 Recordkeeping and reporting.

Recordkeeping and reporting requirements regulated under this part and § 672.4 of this chapter are located at § 672.5 of this chapter.

19. In § 675.7, paragraph (a) is revised, and paragraphs (q) and (r) are added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(a) Fish for groundfish in the BSAI with a vessel of the United States that does not have on board a valid permit issued under § 672.4 of this chapter.

* * * * *

(q) Fail to comply with or fail to ensure compliance with requirements at § 672.5 of this chapter.

(r) Use a Catcher Vessel or Catcher/Processor as a Tender Vessel before offloading all groundfish or groundfish product harvested or processed by that vessel.

Subpart B—Management Measures

20. In § 675.20, paragraphs (a)(1) and (c)(1) are revised; headings for paragraphs (a)(8) through (a)(12), (d), (j)(1), and (j)(2) are added; heading for paragraph (i)(2) is revised; paragraphs (h)(1) and (h)(3) are amended by revising the words, ''Table 1 to this section'' to read ''Table 11 of part 672,'' and Table 1 to § 675.20 is removed. The revised and added text reads as follows:

§ 675.20 General limitations.

(a) * * *

(1) *Optimum yield (OY).* The OY for the fishery regulated by this section and by § 611.93 of this chapter is a range of 1.4 to 2.0 million mt for target species and the ''other species'' category in the BSAI, to the extent this amount can be harvested consistently with this part and part 611 of this chapter, plus the amounts of ''non-specified species'' taken incidentally to the harvest of target species and the ''other species'' category. The species categories are defined in Table 1 of the specifications as provided in paragraph (a)(7) of this section.

* * * * *

(8) *Directed fishing allowance.* * * *

(9) *Prohibited species closure.* * * *

(10) *Overfishing closure.* * * *

(11) *JVP or TALFF prohibitions.* * * *

(12) *Factors to be considered.* * * *

* * * * *

(c) * * * (1) Prohibited species, for the purpose of this part, means any of the species of Pacific salmon (*Oncorhynchus* spp.), steelhead trout (*Oncorhynchus mykiss*), Pacific halibut (*Hippoglossus stenolepis*), Pacific herring (*Clupea harengus pallasi*), king crab (*Paralithodes* spp. and *Lithodes* spp.), and Tanner crab (*Chionoecetes* spp.) caught by a vessel regulated under this part while fishing for groundfish in the BSAI, unless retention is authorized by other applicable law, including the Pacific Halibut Fishery Regulations (part 301 of this title).

* * * * *

(d) *Winter Halibut Savings Area.* * * *

* * * * *

(i) * * *

(2) *Fishing trip.* * * *

* * * * *

(j) * * *

(1) *Pollock roe.* * * *

(2) *Primary product.* * * *

* * * * *

21. In § 675.21, headings are added to paragraphs (a)(1) through (a)(6), and (b)(4), to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

(a) * * *

(1) *Red king crab, Zone 1.* * * *

(2) *Tanner crab, Zone 1.* * * *

(3) *Tanner crab, Zone 2.* * * *

(4) *Pacific halibut, trawl.* * * *

(5) *Pacific herring.* * * *

(6) *Pacific halibut, non-trawl.* * * *

(b) * * *

(4) *Bycatch allowances and seasonal apportionments.* * * *

* * * * *

22. In § 675.22, paragraph (a) is revised and headings are added to paragraphs (b) through (f) to read as follows:

§ 675.22 Time and area closures.

(a) *Year-round closures, Area 512.* No fishing with trawl gear is allowed at any time in that part of Zone 1 in the Bering Sea subarea that is south of 58°00′ N. lat. and between 160°00′ W. long. and 162°00′ W. long. (see Figure 1 of part 672), except as described in paragraph (c) of this section.

(b) *Seasonal closures, Area 516.* * * *

(c) *Partial closures, Area 512.* * * *

(d) *Partial closures, Area 516.* * * *

(e) *Red king crab closures.* * * *

(f) *Walrus Protection Areas.* * * *

* * * * *

23. In § 675.23, paragraph (a) and (d) are revised and headings are added to paragraphs (b) and (c) to read as follows:

§ 675.23 Seasons.

(a) *Fishing year.* Fishing for groundfish in the subareas and statistical areas of the BSAI is authorized from 0001 hours, A.l.t., January 1, through 2359 hours, A.l.t., December 31, subject to the other provisions of this part, except as provided in paragraphs (c) through (e) of this section.

(b) *Time of openings and closures.* * * *

(c) *Directed fishing for arrowtooth flounder and Greenland turbot.* * * *

(d) *Trawl gear prohibition, BSAI.* Notwithstanding other provisions of this part, fishing for groundfish with trawl gear in the BSAI is prohibited from 0001 hours, A.l.t. on January 1, through 1200 hours, A.l.t., January 20.

* * * * *

24. In § 675.24, paragraph (a) is revised; paragraph (e) is removed; paragraphs (f) through (h) are redesignated as paragraphs (e) through (g), respectively; headings are added to paragraphs (c)(1), (c)(2), (c)(3), (d)(1), (d)(2), and newly redesignated paragraphs (f)(2) and (f)(3); the heading for paragraph (b) is revised; and newly designated paragraphs (e) and (f)(4) are revised to read as follows:

§ 675.24 Gear limitations.

(a) *Marking of gear.* (1) All longline marker buoys carried on board or used

by vessels regulated under this part shall be marked with at least one of the following:

(i) The vessel's name; and

(ii) The vessel's fisheries permit number; or

(iii) The vessel's registration number.

(2) Marking shall be in characters at least 4 inches (10.2 cm) in height and one-half inch (1.3 cm) in width, in a contrasting color visible above the water line, and shall be maintained in good condition.

(b) *Gear restrictions—pots.*

* * * * *

(c) * * *

(1) *Sablefish.* * * *

(2) *Pollock.* * * *

(3) *Longline pot gear.* * * *

(d) * * *

(1) *Directed fishing closures.* * * *

(2) *PSC closures.* * * *

* * * * *

(e) *Steller sea lion protection areas*—(1) *Bering Sea Subarea and Bogoslof District*—(i) *Year-round closures.* Trawling is prohibited within 10 nm of each of the eight Steller sea lion rookeries shown in Table 4a of part 672 of this title.

(ii) *Seasonal closures.* During January 1 through April 15, or a date earlier than April 15 if adjusted under § 675.20(a)(8), trawling is prohibited within 20 nm of each of the six Steller sea lion rookeries shown in Table 4b of part 672 of this title.

(2) *Aleutian Islands Subarea*—(i) *Year-round closures.* Trawling is prohibited within 10 nm of each of the 19 Steller sea lion rookeries shown in Table 5a of part 672 of this chapter.

(ii) *Seasonal closures.* During January 1 through April 15, or a date earlier than April 15 if adjusted under § 675.20(a)(8), trawling is prohibited within 20 nm of each of the two Steller sea lion rookeries shown in Table 5b of part 672 of this chapter.

(f) *Trawl gear testing areas.* * * *

(2) *Test area conditions.* * * *

(3) *Test area criteria.* * * *

(4) *Bering Sea Testing Area.* Trawl gear testing is allowed in an area (Figure 7 of part 672 of this chapter) bounded by straight lines connecting the following coordinates in the order listed, at all times:

W. longitude	*N. latitude*
167° 00′	55° 00′
166° 00′	55° 00′
166° 00′	54° 40′
167° 00′	54° 40′
167° 00′	55° 00′

* * * * *

25. Section 675.27 is amended by removing table 1 at the end of § 675.27; revising paragraph (d)(2) introductory text and paragraph (g); and by adding headings to paragraphs (a)(1), (a)(2), (c)(1), (c)(2), (e)(1) through (e)(4), and (f)(1) through (f)(3) to read as follows:

§ 675.27 Western Alaska Community Development Quota Program (applicable through December 31, 1995).

(a) * * *

(1) Compliance. * * *

(2) Public hearing. * * *

* * * * *

(c) * * *

(1) *Consistent with criteria.* * * *

(2) *Not consistent with criteria.* * * *

(d) *Evaluation criteria.* * * *

(2) Prior to approval of a CDP recommended by the Governor, NMFS will review the Governor's findings to determine that each community that is part of a CDP is listed on Table 7 of part 672 of this chapter or meets the following criteria for an eligible community:

* * * * *

(e) * * *

(1) *Annual reports.* * * *

(2) *Increase in CDQ allocation.* * * *

(3) *Amendment to a CDP.* * * *

(4) *Reaching CDQ allocation.* * * *

(f) * * *

(1) *Recommendation of Governor.* * * *

(2) *Non-compliance.* * * *

(3) *Review of allocation.* * * *

(g) *CDQ fishing requirements.* Recordkeeping and reporting requirements are set out at § 672.5 of this chapter.

* * * * *

PART 675—[AMENDED]

26. Part 675 is amended by removing the heading ''Figures—Part 675'' and the figures at the end of the part.

[FR Doc. 95–21408 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–22–W

federal register

Friday
September 8, 1995

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 51

Onions (Bermuda-Granex-Grano) and Other Onions; Grade Standards; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–94–302]

Bermuda-Granex-Grano Type Onions and Onions (Other Than Bermuda-Granex-Grano and Creole Type); Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Bermuda-Granex-Grano Type Onions and United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Type). The revision sets a minimum sample size for consumer size packages, provides a ''Colossal'' size classification and eliminates Export size classifications. It also includes other technical revisions to update the standards in accord with current handling and marketing practices.

EFFECTIVE DATE: October 10, 1995.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2049 South Building, Washington, DC 20090–6456, (202) 720–2185.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on substantial number of small entities. This final rule for the revision of U.S. Standards for Grades of Bermuda-Granex-Grano Type Onions and U.S. Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Type) will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The United States Standards for Grades of Bermuda-Granex-Grano Type Onions was last revised February 20, 1985, and the United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types) was last revised October 1, 1971. In general, the Bermuda-Granex-Grano Type (BGG) standard is applied to southern grown onions that have thin papery outer scales, are harvested in the spring and summer and are not typically kept in storage. The Other Than Bermuda-Granex-Grano and Creole Types (Other Than) standard is generally applied to northern grown onions that have thick outer papery scales, are harvested in the fall and are more commonly stored. The major distinction between the two standards for grades of these onions is the lot tolerances; 10 percent for BGG and 5 percent for Other Than. Although separated by type and tolerances, many similarities exist in the grading of these onions. The different types of onions are affected by most of the same defects. The procedures for sampling and performing grading activities are essentially the same regardless of which standard is being applied. The standards were established and have been revised separately over the years to reflect the needs of their respective industries.

A broad spectrum of growers and shippers of onions who utilize both standards, represented by The National Onion Association (NOA), requested that the minimum sample size for consumer size packages be designated at 20 pounds in each standard. While considering the NOA's request the Agency, through a periodic review, decided to take the opportunity to bring the standards into closer uniformity with each other and conformity to current harvesting, handling and marketing practices by proposing additional revisions including a grade for peeled onions, an additional size designation for colossal onions and technical revisions to promote uniformity and clarity wherever possible.

The proposed rule, United States Standards for Grades of Bermuda-Granex Grano Type Onions and United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Type), was published in the **Federal Register** on February 16, 1995, (60, FR 8973–8981). The 60 day comment period ended April 17, 1995, and a total of eleven comments were received from six individual growers/packers/shippers, four associations and committees and one from an individual consumer.

Three of these comments, which included two growers/packers/shippers and the NOA, were in full support of the proposal. One commentor expressed that, ''Since we market onions of both types, we feel the changes to (the) standard are needed and will make the inspection and marketing of onions much easier.'' The NOA agreed with the agency's effort to modernize and update the standards because it would encourage improved marketing practices and business conditions for U.S. onion producers, shippers, and handlers. Another comment simply stated agreement with the proposed rule.

Three comments were received which were in general support of the proposed changes but which expressed some disagreement on one or two of the specific revisions.

A grower/packer/shipper suggested that the medium size designation be changed from 2 inch minimum to 2¼ inch minimum and be called large/medium or medium/large. In regards to the new colossal size designation this commentor also stated that ''colossal in the trade is generally 4″ and larger not 3¾.″ Size designations in the standards are not requirements of the grades but provide reasonable guidelines that may be specified in connection with the grades. These guidelines provide the basis for a common trading language. However, industry members may specify any size qualifications they agree to in their contracts. AMS believes that the consolidation of the separate size classifications from each standard into one has achieved the intended purpose of uniformity and clarity. The colossal size designation provides specifications (3¾ inches minimum) that would allow for a lot of onions that are packed to 4 inches minimum yet still maintains a reasonable distinction from the next smaller size designation. Therefore, AMS has decided to leave the sizes as designated in the proposal.

Two produce organization groups sent in identical comments in regards to the proposed U.S. No. 1 Peeled grade. They suggested the grade be substantially rewritten as a ''U.S. Peeled grade'' and

specified basic requirements, free from defects, free from serious damage defects and other requirements. The comments suggested a grade for peeled onions that was substantially different than the one proposed. Having considered these comments and other comments that give general agreement to the proposal as written or make no specific comment to this issue, AMS has decided to not include the proposed U.S. No. 1 Peeled grade in this standard change. AMS believes further investigation of the need for a peeled onion grade and what requirements would best serve the industry should be undertaken based on these comments.

Two comments were received that addressed specific points they wished to see changed from the proposal.

One grower/packer/shipper commented that ''we would like to see the tolerance for decay increased to 4% and total defects allowed to 7% for the other than Bermuda-Grano-Granex type onions. This would save millions of dollars in food claims each year that would go to the farmers and not adversely affect the ultimate return to the receiver with consumer prices eventually falling.'' The tolerances in the ''Other Than'' standard have been in place since the inception of the standard in 1920. Changes to the tolerances were not included in the proposed rule because there was no request to do so and AMS saw no need to change that which has been working successfully for the life of this standard. Accordingly, AMS will not be changing any tolerance percentages in this final rule.

A grower/packer/shipper of pearl and boiler onions had some comments in regards to the proposed 20 pound minimum sample size for consumer size packages. In the proposal, Samples for grade and size determination (sections 51.3201 in ''BGG'' and 51.2839 in ''Other Than'') states in part ''When individual packages contain less than 20 pounds, a sufficient number of adjoining packages are opened to provide at least a twenty pound sample.'' This commentor pointed out that for the very small pearl or boiler onions which are packed in packages from 10 to 16 ounces this minimum sample size would impose severe hardship. The commentor points out that ''the proposed minimum sampling requirement of twenty pounds will necessitate the opening and examination of 32 packages of pearl onions and 20 packages of boiler onions per sample * * * Therefore, for a full semi-trailer load of these consumer size packages, a minimum of 256 packages (approximately *9,600* bulbs) of pearls and a minimum of 160 packages (approximately *3,025* bulbs) of boilers would need to be examined under this proposed sampling requirement. We believe this is an excessively large number of bulbs, and the cost of inspection would be prohibitive.'' AMS believes that this comment has merit. There would be an unnecessary burden to both industry and the inspection service to sample and inspect as many packages as needed for these smaller size onions under the proposed sampling guidelines. Therefore, AMS has decided to provide an exemption from the 20 pound sample size for onions packed to meet 2¼ inch and smaller maximum size. For these onions the samples may consist of either 20 pounds or the individual package. Samples for grade and size determination will now read: ''Individual samples shall consist of at least 20 pounds for onions packed to meet larger than 2¼ inches maximum diameter. When individual packages contain 20 pounds or more and the onions are packed for Large or Jumbo size or larger the package shall be the sample. When individual packages contain less than 20 pounds, a sufficient number of adjoining packages are opened to provide at least a 20 pound sample, except that for onions packed to meet 2¼ inches maximum diameter or smaller, the sample may consist of either 20 pounds or the individual package.''

One comment received from a major receiver's association was opposed to the proposal in general. They recommend that AMS retain the existing standards unchanged citing that ''Increasing the tolerance of any grade and/or condition factors as well as increasing the defect percentage of any specific grade and/or condition factors or a combination thereof will result in a reduction of the existing quality standards.'' However, no tolerance changes are included in this standard revision. Further, the revisions to these onion standards are strictly for clarification, uniformity and conformity to current harvesting, handling, and marketing practices. Accordingly, no changes to the proposed standards are being made based on this comment.

Two comments received did not address the provisions of the proposal. One was from an individual consumer and the other was from a grower/packer/shipper.

A copy of the proposed rule was provided to the Agricultural Research Service (ARS) for help in identifying studies, data collection or other information relevant to the possible effect of the proposed revision on pesticide use. ARS reported that they were unable to find much information on the subject. The information that was found by ARS proved not to be relevant.

The Agricultural Marketing Service (AMS) develops and improves standards of quality, condition, grade, and packaging to enhance the marketing of agricultural commodities by fostering consistency in commercial practices. The Agency has determined this final rule will enhance the marketing of onions. The provisions of this final rule are the same as those in the proposed rule except for the changes noted above in response to the comments received, and several minor editorial changes made for clarity.

Accordingly, this revision shall become effective 30 days after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, 7 CFR Part 51 is amended as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. In Part 51, Subpart—United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types) is revised to read as follows:

Subpart—United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types)

Grades

Sec.
51.2830 U.S. No. 1.
51.2831 U.S. Export No. 1.
51.2832 U.S. Commercial.
51.2833 U.S. No. 1 Boilers.
51.2834 U.S. No. 1 Picklers.
51.2835 U.S. No. 2.

Size Classifications

51.2836 Size classifications.

Tolerances

51.2837 Tolerances.

Samples for Grade and Size Determination

51.2838 Samples for grade and size determination.

Application of Tolerances

51.2839 Application of tolerances.

Export Packing Requirements

51.2840 Export packing requirements.

Definitions

51.2841 Mature.
51.2842 Dormant.
51.2843 Fairly firm.

51.2844 Fairly well shaped.
51.2845 Wet sunscald.
51.2846 Doubles.
51.2847 Bottlenecks.
51.2848 Scallions.
51.2849 Damage.
51.2850 Diameter.
51.2851 Badly misshapen.
51.2852 Serious damage.
51.2853 One type.

Metric Conversion Table

51.2854 Metric conversion table.

Subpart—United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types)

Grades

§ 51.2830 U.S. No. 1.

U.S. No. 1 consists of onions which meet the following requirements:

(a) Basic requirements:
(1) Similar varietal characteristics;
(2) Mature;
(3) Fairly firm; and,
(4) Fairly well shaped.
(b) Free from:
(1) Decay;
(2) Wet sunscald;
(3) Doubles;
(4) Bottlenecks; and,
(5) Scallions.
(c) Free from damage caused by:
(1) Seedstems;
(2) Splits;
(3) Tops;
(4) Roots;
(5) Dry sunken areas;
(6) Sunburn;
(7) Sprouts;
(8) Freezing;
(9) Peeling;
(10) Cracked fleshy scales;
(11) Watery scales;
(12) Dirt or staining;
(13) Foreign matter;
(14) Mechanical;
(15) Translucent scales;
(16) Disease;
(17) Insects; and,
(18) Other means.
(d) For tolerances see § 51.2837.
(e) Size. Unless otherwise specified the diameter shall be not less than 1½ inches, and yellow, brown, or red onions shall have 40 percent or more, and white onions shall have 30 percent or more, by weight, of the onions in any lot 2 inches or larger in diameter.
(f) When a percentage of the onions is specified to be of any certain size or larger, no part of any tolerance shall be allowed to reduce the specified percentage, but individual packages in a lot may have as much as 25 percentage points less than the percentage specified, except that individual packages containing 10 pounds or less shall have no requirements as to percentage of a certain size or larger: *Provided*, that any lot, regardless of package size, shall average within the percentage specified. (See §§ 51.2836 and 51.2837)[1]

§ 51.2831 U.S. Export No. 1.

U.S. Export No. 1 consists of onions which meet the following requirements:

(a) Basic requirements:
(1) Similar varietal characteristics;
(2) Mature;
(3) Dormant;
(4) Fairly firm; and,
(5) Fairly well shaped.
(b) Free from:
(1) Decay;
(2) Wet sunscald;
(3) Doubles;
(4) Bottlenecks; and,
(5) Scallions.
(c) Free from damage caused by:
(1) Seedstems;
(2) Splits;
(3) Tops;
(4) Roots;
(5) Dry sunken areas;
(6) Sunburn;
(7) Sprouts;
(8) Freezing;
(9) Peeling;
(10) Cracked fleshy scales;
(11) Watery scales;
(12) Dirt or staining;
(13) Foreign matter;
(14) Mechanical;
(15) Translucent scales;
(16) Disease;
(17) Insects; and,
(18) Other means.
(d) Unless otherwise specified onions are packed in accordance with Export Packing Requirements set forth in § 51.2840. (See § 51.2837.)

§ 51.2832 U.S. Commercial.

U.S. Commercial consists of onions which meet the following requirements:

(a) Basic requirements:
(1) Similar varietal characteristics;
(2) Mature;
(3) Not soft or spongy; and,
(4) Not badly misshapen.
(b) Free from:
(1) Decay;
(2) Wet sunscald;
(3) Doubles;
(4) Bottlenecks; and,
(5) Scallions.
(c) Free from damage caused by:
(1) Seedstems;
(2) Tops;
(3) Roots;
(4) Dry sunken areas;
(5) Sunburn;
(6) Sprouts;
(7) Freezing;
(8) Cracked fleshy scales;
(9) Watery scales;
(10) Mechanical;
(11) Translucent scales;
(12) Disease;
(13) Insects; and,
(14) Other means.
(d) Free from serious damage caused by:
(1) Staining;
(2) Dirt; and,
(3) Other foreign matter.
(e) For tolerances see § 51.2837.
(f) Size. Unless otherwise specified, the diameter shall be not less than 1½ inches. (See §§ 51.2836 and 51.2837.)

§ 51.2833 U.S. No. 1 Boilers.

U.S. No. 1 Boilers consists of onions which meet all the requirements for the U.S. No. 1 grade except for size. (See § 51.2830.) Size: The diameter of onions of this grade shall be not less than 1 inch nor more than 1⅞ inches. (See § 51.2837.)

§ 51.2834 U.S. No. 1 Picklers.

U.S. No. 1 Picklers consists of onions which meet all the requirements for the U.S. No. 1 grade except for size. (See § 51.2830.) Size: The maximum diameter of onions of this grade shall be not more than 1 inch. (See § 51.2837.)

§ 51.2835 U.S. No. 2.

U.S. No. 2 consists of onions which meet the following requirements:

(a) Basic requirements:
(1) One type;
(2) Mature; and,
(3) Not soft or spongy.
(b) Free from:
(1) Decay;
(2) Wet sunscald; and,
(3) Scallions.
(c) Free from serious damage caused by:
(1) Watery scales;
(2) Dirt or Staining;
(3) Foreign Matter;
(4) Seedstems;
(5) Sprouts;
(6) Mechanical;
(7) Dry sunken areas;
(8) Disease;
(9) Freezing;
(10) Insects; and,
(11) Other means.
(d) For tolerances see § 51.2837.
(e) Size. Unless otherwise specified, the diameter shall not be less than 1½ inches. (See §§ 51.2836 and 51.2837.)

Size Classifications

§ 51.2836 Size classifications.

The size of onions may be specified in accordance with one of the following classifications.

[1] Any lot of onions quoted as being of size smaller than 1½ inches minimum, such as ''U.S. No. 1, 1¼ inches min.'' is not required to meet the percentages which shall be 2 inches or larger as specified in the U.S. No. 1 grade.

Size designation	Minimum diameter		Maximum diameter	
	Inches	Millimeters	Inches	Millimeters
Small	1	25.4	2¼	57.2
Repacker/Prepacker [1]	1¾	44.5	3	76.2
Medium	2	50.8	3¼	82.6
Large or Jumbo	3	76.2	([2])	
Colossal	3¾	95.3	([2])	

[1] In addition to the sizes specified, a lot of onions designated as Repacker or Prepacker shall contain at least 60 percent or more 2 inches or larger in diameter.
[2] No requirement.

Tolerances

§ 51.2837 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades the following tolerances, by weight, are provided as specified:

(a) For defects:

(1) *U.S. No. 1, U.S. Export No. 1, U.S. No. 1 Boilers and U.S. No. 1 Picklers grades.*

(i) Not more than 10 percent of the onions in a lot may be damaged by peeling; and,

(ii) Not more than 5 percent of the onions in a lot may be below the remaining requirements of these grades, but not more than two-fifths of this tolerance, or 2 percent, may be allowed for onions which are affected by decay or wet sunscald (see § 51.2839.)

(2) *U.S. Commercial and U.S. No. 2 grades.*

(i) Not more than 5 percent of the onions in a lot may be below the requirements of these grades, but not more than two-fifths of this tolerance, or 2 percent, may be allowed for onions which are affected by decay or wet sunscald. (See § 51.2839.)

(b) For off-size:

(1) *U.S. No. 1, U.S. No. 1 Boilers, U.S. Commercial, and U.S. No. 2 grades.* Not more than 5 percent of the onions in a lot may be below the specified minimum size, and not more than 10 percent may be above any specified maximum size. (See § 51.2839.)

(2) *U.S. No. 1 Pickler grade.* Not more than 10 percent of the onions in a lot may be above the maximum size specified for this grade. (See § 51.2839.)

Samples for Grade and Size Determination

§ 51.2838 Samples for grade and size determination.

Individual samples shall consist of at least 20 pounds for onions packed to meet larger than 2¼ inches maximum diameter. When individual packages contain 20 pounds or more and the onions are packed for Large or Jumbo size or larger the package shall be the sample. When individual packages contain less than 20 pounds, a sufficient number of adjoining packages are opened to provide at least a 20 pound sample, except that for onions packed to meet 2¼ inches maximum diameter or smaller, the sample may consist of either 20 pounds or the individual package.

Application of Tolerances

§ 51.2839 Application of tolerances.

Individual samples are subject to the following limitations:

(a) Samples which contain more than 20 pounds shall have not more than one and one half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent, except that at least one defective and one off-size onion may be permitted in any sample: *Provided,* that en-route or at destination when onions in containers of 50 pounds or more are packed to a minimum size of 3 inches or larger not more than three onions or more than 4 percent (whichever is the larger amount) may be affected by decay or wet sunscald: *And provided further,* that the averages for the entire lot are within the tolerances specified for the grade; and,

(b) Samples which contain 20 pounds or less shall have not more than double the tolerance specified, except that at least one defective and one off-size onion may be permitted in any sample: *Provided,* that the averages for the entire lot are within the tolerances specified for the grade.

Export Packing Requirements

§ 51.2840 Export packing requirements.

Onions specified as meeting Export Packing Requirements shall be packed in containers having a net capacity of 25 kilograms (approximately 56 pounds).

Definitions

§ 51.2841 Mature.

Mature means well cured. Midseason onions which are not customarily held in storage shall be considered mature when harvested in accordance with good commercial practice at a stage which will not result in the onions becoming soft or spongy.

§ 51.2842 Dormant.

Dormant means that at least 90 percent of the onions in any lot show no evidence of growth as indicated by distinct elongation of the growing point or distinct yellow or green color in the tip of the growing point.

§ 51.2843 Fairly firm.

Fairly firm means that the onion may yield slightly to moderate pressure but is not appreciably soft or spongy.

§ 51.2844 Fairly well shaped.

Fairly well shaped means having the shape characteristic of the variety, but onions may be slightly off-type or slightly misshapen.

§ 51.2845 Wet sunscald.

Wet sunscald means sunscald which is soft, mushy, sticky or wet.

§ 51.2846 Doubles.

Doubles means onions which have developed more than one distinct bulb joined only at the base.

§ 51.2847 Bottlenecks.

Bottlenecks are onions which have abnormally thick necks with only fairly well developed bulbs.

§ 51.2848 Scallions.

Scallions are onions which have thick necks and relatively small and poorly developed bulbs.

§ 51.2849 Damage.

Damage means any specific defect described in this section; or any equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the onions. The following specific defects shall be considered as damage:

(a) Seedstems which are tough or woody, or which are more than ¼ inch in diameter;

(b) Splits when onions with two or more hearts are not practically covered by one or more outer scales;

(c) Tops when more than 30 percent of the onions in a lot have tops 3 inches or more in length;

(d) New roots when most roots on an individual onion have grown to a length of 1 inch or more in length;

(e) Dry roots when more than 20 percent of the onions in a lot have practically all roots 2 inches or more in length;

(f) Dry sunken areas when the affected areas exceed the equivalent to that of a circle ½ inch in diameter on an onion 2¾ inches in diameter which does not have the outer papery scale covering the affected areas or when the affected areas exceed the equivalent to that of a circle ¾ inch in diameter on an onion 2¾ inches in diameter which has the outer papery scale covering the affected areas. Correspondingly lesser or greater areas are allowed on smaller or larger onions;

(g) Sunburn when more than 33 percent of the onions in a lot have a medium green color on one-third of the surface;

(h) Sprouts when visible, or when concealed within the dry top and more than ¾ inch in length on an onion 2 inches or larger in diameter, or proportionately shorter on smaller onions;

(i) Peeling when more than one-half of the thin papery skin is missing, leaving the underlying fleshy scale unprotected;

(j) Cracked fleshy scales when one or more of the fleshy scales are cracked;

(k) Watery scales when more than the equivalent of the entire outer fleshy scale is affected by an off-color, watersoaked condition. The off-color must be of some shade of brown or yellow;

(l) Dirt, staining or other foreign matter when more than 20 percent of the onions in a yellow, brown or red lot, or more than 15 percent of the onions in a white lot are appreciably stained. Onions with adhering dirt or other foreign matter shall be judged on the same basis as stained onions;

(m) Mechanical when any cut extends deeper than one fleshy scale, or when any bruise breaks a fleshy scale; and,

(n) Translucent scales when more than the equivalent of two entire outer fleshy scales have a watersoaked condition.

§ 51.2850 Diameter.

Diameter means the greatest dimension measured at right angles to a straight line running from the stem to the root.

§ 51.2851 Badly misshapen.

Badly misshapen means that the onion is so misshapen that its appearance is seriously affected.

§ 51.2852 Serious damage.

Serious damage means any specific defect described in this section; or any equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the onions. The following specific defects shall be considered as serious damage:

(a) Watery scales when more than the equivalent of two entire outer fleshy scales are affected by an off-colored, watersoaked condition. The off-color must be of some shade of brown or yellow;

(b) Dirt, staining or other foreign matter when more than 25 percent of the onions in a lot are badly stained. Onions with adhering dirt or other foreign matter shall be judged on the same basis as stained onions;

(c) Seedstems when more than ½ inch in diameter;

(d) Sprouts when the visible length is more than ½ inch;

(e) Mechanical when any cut extends deeper than two fleshy scales, or when cuts seriously damage the appearance of the onion; and,

(f) Dry sunken areas when extending deeper than one fleshy scale, or when affecting an area equivalent to that of a circle 1 inch in diameter on an onion 2¾ inches in diameter, or correspondingly lesser or greater areas on smaller or larger onions.

§ 51.2853 One type.

One type means that the onions are within the same general color category.

Metric Conversion Table

§ 51.2854 Metric conversion table.

Inches	Millimeters (mm)
⅛	3.2
¼	6.4
⅜	9.5
½	12.7
⅝	15.9
¾	19.1
⅞	22.2
1	25.4
1¼	31.8
1½	38.1
1¾	44.5
2	50.8
2½	63.5
2¾	69.9
3	76.2
3½	88.9
4	101.6

3. In Part 51, Subpart—United States Standards for Grades of Bermuda-Granex-Grano Type Onions is revised to read as follows:

Subpart—United States Standards for Grades of Bermuda-Granex-Grano Type Onions

Grades

Sec.
51.3195 U.S. No. 1.
51.3196 U.S. Combination.
51.3197 U.S. No. 2.

Size Classifications

51.3198 Size classifications.

Tolerances

51.3199 Tolerances.

Samples for Grade and Size Determination

51.3200 Samples for grade and size determination.

Application of Tolerances

51.3201 Application of tolerances.

Definitions

51.3202 Similar varietal characteristics.
51.3203 Mature.
51.3204 Fairly firm.
51.3205 Fairly well shaped.
51.3206 Wet sunscald.
51.3207 Doubles.
51.3208 Bottlenecks.
51.3209 Damage.
51.3210 Serious damage.
51.3211 Diameter.

Metric Conversion Table

51.3212 Metric conversion table.

Subpart—United States Standards for Grades of Bermuda-Granex-Grano Type Onions

Grades

§ 51.3195 U.S. No. 1.

U.S. No. 1 consists of onions which meet the following requirements:

(a) Basic requirements:
(1) Similar varietal characteristics;
(2) Mature;
(3) Fairly firm; and,
(4) Fairly well shaped.

(b) Free from:
(1) Decay;
(2) Wet sunscald;
(3) Doubles; and,
(4) Bottlenecks.

(c) Free from damage caused by:
(1) Seedstems;
(2) Splits;
(3) Dry sunken areas;
(4) Sunburn;
(5) Sprouting;
(6) Staining;
(7) Dirt or foreign material;
(8) Mechanical;
(9) Tops;
(10) Roots;
(11) Translucent scales;
(12) Watery scales;
(13) Moisture;
(14) Disease;
(15) Insects; and,
(16) Other means.

(d) For size and tolerances see §§ 51.3198 and 51.3199.

§ 51.3196 U.S. Combination.

U.S. Combination consists of a combination of U.S. No. 1 and U.S. No. 2 onions: *Provided,* That at least 50 percent, by weight, of the onions in each lot meet the requirements of U.S. No. 1 grade. (See §§ 51.3198 and 51.3199.)

§ 51.3197 U.S. No. 2.

U.S. No. 2 consists of onions which meet the following requirements:

(a) Basic requirements:

(1) Similar varietal characteristics; and,

(2) Not soft or spongy.

(b) Free from:

(1) Decay;

(2) Wet sunscald; and,

(3) Bottlenecks.

(c) Free from serious damage caused by:

(1) Seedstems;

(2) Dry sunken areas;

(3) Sprouting;

(4) Staining;

(5) Dirt or other foreign material;

(6) Mechanical;

(7) Watery scales;

(8) Insects;

(9) Disease; and,

(10) Other means.

(d) For size and tolerances see §§ 51.3198 and 51.3199.

Size Classifications

§ 51.3198 Size classifications.

Size shall be specified in connection with the grade in terms of minimum diameter, range in diameter, minimum diameter with a percentage of a certain size or larger, or in accordance with one of the size classifications listed below: *Provided,* that unless otherwise specified, onions shall not be less than 1½ inches in diameter, with 60 percent or more 2 inches or larger in diameter.

Size designation	Minimum diameter		Maximum diameter	
	Inches	Millimeters	Inches	Millimeters
Small	1	25.4	2¼	57.2
Repacker/Prepacker [1]	1¾	44.5	3	76.2
Medium	2	50.8	3¼	82.6
Large or Jumbo	3	76.2	([2])	.....
Colossal	3¾	95.3	([2])	.....

[1] In addition to the sizes specified, a lot of onions designated as Repacker or Prepacker shall contain at least 60 percent or more 2 inches or larger in diameter.

[2] No requirement.

Tolerances

§ 51.3199 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades the following tolerances, by weight, are provided as specified:

(a) For defects:

(1) *U.S. No. 1 and U.S. No. 2 grades.* Not more than 10 percent of the onions in a lot may fail to meet the requirements of these grades, but not more than one-fifth of this tolerance, or 2 percent, may be allowed for onions which are affected by decay or wet sunscald.

(2) *U.S. Combination grade.* When applying the foregoing tolerances to this grade no part of any tolerance shall be allowed to reduce, for the lot as a whole, the 50 percent of onions of the U.S. No. 1 grade, but individual containers shall have not less than 40 percent of the U.S. No. 1 grade.

(b) For size:

(1) Not more than 5 percent of the onions in a lot may be smaller than the minimum diameter specified. In addition, not more than 10 percent of the onions in a lot may be larger than the maximum diameter specified.

(2) When a percentage of the onions is specified to be a certain size and larger, individual packages containing more than 10 pounds may have not less than one-half of the percentage specified: *Provided,* that the entire lot averages within the percentage specified.

Samples for Grade and Size Determination

§ 51.3200 Samples for grade and size determination.

Individual samples shall consist of at least 20 pounds for onions packed to meet larger than 2¼ inches maximum diameter. When individual packages contain 20 pounds or more and the onions are packed for Large or Jumbo size or larger the package shall be the sample. When individual packages contain less than 20 pounds, a sufficient number of adjoining packages are opened to provide at least a 20 pound sample, except that for onions packed to meet 2¼ inches maximum diameter or smaller, the sample may consist of either 20 pounds or the individual package.

Application of Tolerances

§ 51.3201 Application of tolerances.

Individual samples are subject to the following limitations:

(a) Samples which contain more than 20 pounds shall have not more than one and one half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent, except that at least one defective and one off-size onion may be permitted in any sample: *Provided,* that en-route or at destination when onions in containers of 50 pounds or more are packed to a minimum size of 3 inches or larger not more than three onions or more than 4 percent (whichever is the larger amount) may be affected by decay or wet sunscald: *And provided further,* that the averages for the entire lot are within the tolerances specified for the grade; and,

(b) Samples which contain 20 pounds or less shall have not more than double the tolerance specified, except that at least one defective and one off-size onion may be permitted in any sample: *Provided,* that the averages for the entire lot are within the tolerances specified for the grade.

Definitions

§ 51.3202 Similar varietal characteristics.

Similar varietal characteristics means that the onions in any container are similar in color, shape and character of growth.

§ 51.3203 Mature.

Mature means that the onion is fairly well cured, and at least fairly firm.

§ 51.3204 Fairly firm.

Fairly firm means that the onion may yield slightly to moderate pressure but is not appreciably soft or spongy.

§ 51.3205 Fairly well shaped.

Fairly well shaped means that the onion shows the characteristic shape, not appreciably three-, four- or five-sided, thick necked or badly pinched.

§ 51.3206 Wet sunscald.

Wet sunscald means any sunscald which is soft, mushy, sticky or wet.

§ 51.3207 Doubles.

Doubles means onions which have developed more than one distinct bulb joined only at the base.

§ 51.3208 Bottlenecks.

Bottlenecks means onions which have abnormally thick necks with only fairly well developed bulbs.

§ 51.3209 Damage.

Damage unless otherwise specifically defined in this section, means any defect which materially affects the appearance, or the edible or shipping quality of the onions. Any one of the following defects, or combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

(a) Seedstems which are tough or woody, or which are more than ¼ inch in diameter;

(b) Splits when well cured onions are not practically covered by an outer scale, or when fairly well cured onions are not completely covered by one outer scale;

(c) Dry sunken areas when the affected areas exceed the equivalent to that of a circle ½ inch in diameter on an onion 2¾ inches in diameter which does not have the outer papery scale covering the affected areas or when the affected areas exceed the equivalent to that of a circle ¾ inch in diameter on an onion 2¾ inches in diameter which has the outer papery scale covering the affected areas. Correspondingly lesser or greater areas are allowed on smaller or larger onions;

(d) Sunburn when dark green in color and affecting an area equivalent to that of a circle 1 inch in diameter on an onion 2¾ inches in diameter or correspondingly smaller or larger areas on smaller or larger onions, or when medium to light green in color and affecting more than 10 percent of the surface of the onion;

(e) Sprouting when any sprout is visible, or when concealed within the neck scales and are more than ¾ inch in length on an onion 2 inches or larger in diameter, or proportionately shorter on smaller onions;

(f) Staining, dirt or other foreign material when more than 20 percent of the onions in a yellow, brown or red lot, or more than 15 percent of the onions in a white lot are appreciably stained. Onions with adhering dirt or other foreign matter shall be judged on the same basis as stained onions;

(g) Mechanical when any cut extends deeper than one fleshy scale, or when any bruise breaks a fleshy scale;

(h) Tops when more than 30 percent of the onions in a lot have tops 3 inches or more in length;

(i) New roots when most roots on an individual onion have grown to a length of 1 inch or more;

(j) Dry roots when practically all roots are 2 inches or more in length;

(k) Translucent scales when more than the equivalent of two entire outer fleshy scales have a watersoaked condition; and,

(l) Watery scales when more than the equivalent of the entire outer fleshy scale is affected by an off-color, watersoaked condition. The off-color must be of some shade of brown or yellow.

§ 51.3210 Serious damage.

Serious damage unless otherwise specifically defined in this section, means any defect which seriously affects the appearance, or the edible or shipping quality of the onions. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as serious damage:

(a) Seedstems when more than ½ inch in diameter;

(b) Dry sunken areas when extending deeper than one fleshy scale, or when affecting an area equivalent to that of a circle 1 inch in diameter on an onion 2¾ inches in diameter, or correspondingly lesser or greater areas on smaller or larger onions;

(c) Sprouting when any visible sprout is more than ½ in length;

(d) Staining, dirt or foreign material when more than 25 percent of the onions in any lot are badly stained. Onions with adhering dirt or other foreign matter shall be judged on the same basis as stained onions;

(e) Mechanical when any cut extends deeper than two fleshy scales, or when cuts seriously damage the appearance of the onion; and,

(f) Watery scales when more than the equivalent of two entire outer fleshy scales are affected by an off-colored, watersoaked condition. The off-color must be of some shade of brown or yellow.

§ 51.3211 Diameter.

Diameter means the greatest dimension of the onion at right angles to a line running from the stem to the root.

Metric Conversion Table

§ 51.3212 Metric conversion table.

Inches	Millimeters *(mm)
⅛	3.2
¼	6.4
⅜	9.5
½	12.7
⅝	15.9
¾	19.1
⅞	22.2
1	25.4
1¼	31.8
1½	38.1
1¾	44.5
2	50.8
2½	63.5
2¾	69.9
3	76.2
3½	88.9
4	101.6

Dated: September 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–22281 Filed 9–7–95; 8:45 am]

BILLING CODE 3410–02–P

federal register

Friday
September 8, 1995

Part V

Department of Labor

Employment and Training Administration

Department of Education

Office of Vocational and Adult Education; School-to-Work Opportunities; Local Partnership Grants; Application Procedures; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; School-to-Work Opportunities; Local Partnership Grants; Application Procedures

AGENCIES: Employment and Training Administration, Department of Labor; Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of availability of funds, solicitation for grant application (SGA), an administrative cost cap, a definition of administrative costs, and final selection criteria for School-to-Work Opportunities Local Partnership Grants.

SUMMARY: This notice announces the fiscal year (FY) competition for Local Partnership Grants authorized under Title III of the School-to-Work Opportunities Act of 1994 (the Act). This notice contains all of the necessary information and forms needed to apply for grant funding in FY 1995. The Departments also establish final selection criteria to be used in evaluating applications submitted under the Local Partnership Grants competition in FY 1995 and in succeeding years. The Departments also establish a definition for the term ''administrative costs,'' as well as a 10 percent cap on administrative costs incurred by local partnerships receiving grants under Title III of the Act.

DATES: Applications for grant awards will be accepted commencing September 8, 1995. The closing date for receipt of applications is November 7, 1995, at 2 p.m. (Eastern time) at the following address. Telefacsimile (FAX) applications will NOT be accepted.

ADDRESSES: Applications must be mailed to: U.S. Department of Education, Application Control Center, Attention: CFDA #278C, Washington, D.C. 20202–4725.

FOR FURTHER INFORMATION CONTACT: Maria Kniesler, National School-to-Work Office. Telephone: (202) 401–6222. (This is not a toll-free number). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Section A. Background

The Departments of Labor and Education are reserving funds appropriated for FY 1995 under Pub. L. 103–329 (the Act) for a competition for Local Partnership Grants authorized under Title III of the Act. In accordance with the authority provided in section 5 of the Act, the Departments have determined that the administrative provisions contained in the Education Department General Administrative Regulations (EDGAR) at 34 CFR Parts 74, 75, 77, 79, 80, 82, 85 and 86, will apply to grants awarded to local partnerships under this competition.

This notice contains a definition of the term ''administrative costs,'' a 10 percent cap on administrative costs incurred by local partnerships receiving grants under Title III, and the selection criteria that will be used in evaluating applications submitted in response to this year's competition, and all of the other necessary information and forms needed to apply for grant funding.

Section B. Purpose

Under this competition, the Departments will award grants to local partnerships that have built a sound planning and development base for their school-to-work programs, to begin implementation of School-to-Work Opportunities initiatives that will become part of statewide School-to-Work Opportunities systems. These local initiatives will offer young Americans access to programs designed to prepare them for first jobs in high-skill, high-wage careers, and to increase their opportunities for further education and training.

Section C. Application Process

1. Eligible Applicants

A local entity that meets the definition of ''local partnership'' in section 4(11) of the Act, is eligible to apply for a Local Partnership Grant. However, local partnerships that are located in the eight States that were awarded School-to-Work Opportunities State Implementation Grants in 1994 are not eligible to apply for a Local Partnership Grant under this competition. These eight States are: Maine, Massachusetts, New York, New Jersey, Kentucky, Wisconsin, Michigan, and Oregon. In addition, it should be noted that local partnerships located in States that are slated to receive School-to-Work Opportunities State Implementation Grants in 1995 are eligible to apply for grants under this competition.

As defined in the Act, an eligible partnership must include employers, representatives of local educational agencies and local postsecondary educational institutions (including representatives of area vocational education schools, where applicable), local educators, representatives of labor organizations or nonmanagerial employee representatives, and students. Other entities appropriate to effective implementation of a local School-to-Work Opportunities initiative should also be included in the partnership.

Under section 302(a) of the Act a local partnership is eligible to receive only one (1) Local Partnership Grant.

2. State Comments

The local partnership must submit its application to the State for review and comment before submitting the application to the Departments, in accordance with section 303(a) of the Act. The application should be submitted to the State's School-to-Work Contact. A list of State School-to-Work Contacts is included in Appendix D of this notice. The Departments expect that the State School-to-Work Contact will provide all members of the State School-to-Work Partnership listed in section 213(b)(4)(A)-(K) of the Act, an opportunity to review and comment on the local partnership's application.

Of particular importance to the Departments are each State's comments on the consistency of the local partnership's planned activities with the State's plan for a comprehensive statewide School-to-Work Opportunities system and the relationship of any proposed activities with other local plans, especially if the grant applicant is not specifically identified as a local partnership within the State system.

In accordance with section 305 of the Act, if a State has an approved State School-to-Work Opportunities plan, the State must confirm that the plan submitted by the local partnership is in accordance with the State plan. The application from the local partnership must contain this confirmation.

Section 303(b)(1) of the Act requires each State to review and comment on a local partnership's application within 30 days from the date on which the State receives the application from the local partnership. Therefore, even though applicants have 60 days to apply for a Local Partnership Grant under this notice, they must provide their application to their State in time for the State to have at least 30 days before the due date to review and comment on their application.

Furthermore, under section 303(c)(2) of the Act, the State's comments must be included in the local partnership's application. However, if the State does not provide review and comment within the 30-day time period described above, the local partnership may submit the

application without State comment. In such a case, the local partnership should provide proof that the State received a copy of the local partnership's application at least 30 days prior to the application due date.

3. Period of Performance

The period of performance for Local Partnership Grants is twelve months from the date of award by the Departments.

4. Option to Extend

Local Partnership Grants may be extended up to four additional years, but not beyond the second year of a School-to-Work Opportunities State Implementation Grant for the State in which the partnership is located. Extensions will be based upon availability of funds and the progress of the local partnership towards its objectives as approved in its application and will be subject to the annual approval of the Secretaries of Labor and Education (the Secretaries). It is likely that the amount of Federal funds, if any, that are awarded to local partnerships under this notice in subsequent years will decrease.

5. Available Funds

Approximately $15 million is available for this competition.

6. Estimated Range of Awards

The amount of an award under this competition will depend upon the scope, quality, and comprehensiveness of the proposed initiative and the relative size of the community to be served by the local partnership.

The Departments expect that first-year grant amounts will be about $200,000 for areas with populations under 250,000; $200,000 to $300,000 for areas with populations of 250,000 to 499,999; $300,000 to $500,000 for areas with populations of 500,000 to 749,999; $500,000 to $700,000 for areas with populations of 750,000 to 999,999; $700,000 to $1,000,000 for areas with populations of 1,000,000 to 1,499,999; and upwards of $1,500,000 for areas with populations of 1,500,000 or more. These ranges are provided to assist applicants in developing plans. The exact amounts awarded may exceed or be less than the amounts reflected in these ranges.

7. Estimated Number of Awards

The Departments expect to award 25–35 grants under this competition.

Note: The Departments are not bound by any estimates in this notice.

8. Reporting Requirements/Deliverables

(a) Reporting Requirements

The local partnership will be required, at a minimum, to submit—

- Quarterly Financial Reports (SF 269–A);
- Quarterly Narrative Progress Reports;
- An Annual Continuation Application package, if appropriate, including—
- A revised SF–524 and renewed Assurances and Certifications;
- A narrative report describing progress toward stated goals, and identifying goals and objectives for the coming year;
- Annual financial reports (ED Form 524B, and SF 269);
- Budget Information for Upcoming Years;
- An Annual Performance Report providing data on performance measures; and
- A close-out report at the end of the grant.

(b) Deliverables

The local partnership will be required to—

- Provide information on best practices and innovative school- and work-based curricula suitable for dissemination to States and other stakeholders;
- Participate in two grantee meetings per year sponsored by the National School-to-Work Office;
- Act as a host to outside visitors who are interested in developing and implementing School-to-Work Opportunities initiatives and to other visitors interested in the replication, adaptation or impact of successful program elements; and
- Participate as needed in evaluation and special data collection activities.

9. Application Transmittal Instructions

An application for an award must be mailed or hand-delivered by the closing date.

(A) Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention CFDA # 278C, 600 Independence Avenue, S.W., Washington, D.C 20202–4725.

An application must show proof of mailing consisting of one of the following:

- A legibly dated U.S. Postal Service Postmark.
- A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- A dated shipping label, invoice, or receipt from a commercial carrier.
- Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

- A private metered postmark.
- A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office. An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

(B) Applications Delivered by Hand

An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building 3, 7th and D Streets SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays and Federal Holidays.

Individuals delivering applications must use the D Street entrance. Proper identification is necessary in order to enter the building.

In order for an application sent through a courier service to be considered timely, the courier service must be in receipt of the application on or before the closing date.

Section D. Organization and Content of Applications

Applicants are encouraged to submit an original and four copies of their application. The Departments suggest that the application be divided into five distinct parts: budget and certifications, abstract, State comments, program narrative and appendices. To ensure a comprehensive and expedient review, the Departments strongly suggest that applicants submit an application formatted as seen below:

Table of Contents

I. Budget and Certifications

Part I should contain the Standard Form SF 424, ''Application for Federal Assistance,'' and SF 524, ''Budget.'' All copies of the SF 424 must have original signatures of the designated fiscal agent. In addition, the budget should include—on a separate page or pages—a detailed cost breakout of each line item on SF 524. All assurances and certifications included in this notice

should also be included in Part I of the application.

II. Abstract

Part II should consist of a one-page abstract summarizing the essential components and key features of the local partnership's plan.

III. State Comments

Part III should contain the State's comments on the application. Details on this section can be found under State Comments heading of this notice.

IV. Program Narrative

Part IV should contain the application narrative that demonstrates the applicant's plan and capabilities in accordance with the selection criteria contained in section F of this notice. In order to assist applicants in the preparation of their applications and to facilitate expeditious evaluation by the panel, applicants should describe their proposed plan in light of each of the selection criteria. No cost data or reference to price should be included in this part of the application. The Departments strongly request that applicants limit the program narrative section to no more than 40 one-sided, double-spaced pages.

V. Appendices

All applicable appendices, including letters of support, resumes and organizational charts, should be included in this section. The Departments recommend that all appendix entries cross-reference the applicable sections in the program narrative.

Note: Applicants are advised that the peer review panels evaluate each application solely on the basis of the selection criteria contained in this notice, and the School-to-Work Opportunities Act. Appendices may be used to provide supporting information. However, in scoring applications, reviewers are required to take into account only information that is presented in the application narrative, which must address the selection criteria, and requirements of the Act. Letters of support are welcome, but applicants should be aware that support letters contained in the application will strengthen the application only if they contain commitments that pertain to the selection criteria.

Section E. Safeguards

The Departments will apply certain safeguards, as required under section 601 of the Act, to School-to-Work Opportunities programs funded under this notice. The application must include a brief assurance that the following safeguards will be implemented and maintained throughout all program activities:

(a) No student shall displace any currently employed worker (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits).

(b) No School-to-Work Opportunities program shall impair existing contracts for services or collective bargaining agreements, and no program funded under this notice shall be undertaken without the written concurrence of the labor organization and employer concerned.

(c) No student shall be employed or fill a job—

(1) When any other individual is on temporary layoff, with the clear possibility of recall, from the same or any substantially equivalent job with the participating employer; or

(2) When the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created with the student.

(d) Students shall be provided with adequate and safe equipment and safe and healthful workplaces in conformity with all health and safety requirements of Federal, State, and local law.

(e) Nothing in the Act shall be construed so as to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, ethnicity, national origin, gender, age, or disability.

(f) Funds awarded under the Act shall not be expended for wages of students or workplace mentors.

(g) The grantee shall implement and maintain such other safeguards as the Secretaries may deem appropriate in order to ensure that School-to-Work Opportunities participants are afforded adequate supervision by skilled adult workers, or to otherwise further the purposes of the Act.

Section F. Waivers

Under Title V of the Act the Secretaries may waive certain Federal requirements that impede the ability of a State or local partnership to carry out the purposes of the Act. Only local partnerships in States with approved School-to-Work Opportunities plans may apply for waivers. A local partnership that seeks a waiver should contact its State School-to-Work Contact to determine what documentation is required and to whom it should be sent.

In May, 1995, the National School-to-Work Opportunities Office issued a document entitled ''School-to-Work Opportunities Waiver and Plan Approval Process Questions and Answers.'' This document was sent to every Governor and State School-to-Work Contact. The document contains answers to many of the questions that localities may have when preparing their waiver requests. Local Partnerships interested in applying for waivers should contact the National School-to-Work Opportunities Office or their State School-to-Work Contact for a copy of the waivers document.

Section G. Bidders' Conferences

Bidders' Conferences for interested School-to-Work Opportunities Local Partnership representatives are scheduled from 1:00 p.m. to 4:00 p.m., on the dates and locations listed below:

- September 15, 1995, Bartle Hall, 13th and Broadway, Room 2210, Kansas City, Missouri 64106.
- September 18, 1995, Jackson Federal Building, 915 2nd Avenue, North and South Auditorium, 4th Floor, Seattle, Washington 98174.

Participants at the conferences will receive a detailed description of the School-to-Work Opportunities Act, and the selection criteria and how they will be applied, and will have the opportunity to ask questions of Federal School-to-Work officials.

All partnerships must preregister by faxing the names and addresses of up to three members of the local partnership planning to attend, the name of the local partnership, and a phone number to: Kevin Shelton, Training and Technical Assistance Corporation, 2409 18th, NW., Washington, DC; FAX #: (202) 408–8282.

Questions regarding the solicitation may be submitted in advance. If you are unable to attend the Bidders' Conference, but would like the conference materials and a conference transcript, submit your request via fax to the fax number listed above. All information must be submitted no later than September 13, 1995. Conferees will be sent a confirmation along with hotel accommodation information once their registration has been received.

Local Partnership Grant Competition

Analysis of Comments and Changes

On May 25, 1995, the Departments of Labor and Education published a notice containing proposed selection criteria, a 10 percent cap on administrative costs, and a definition of the term ''administrative costs'' for this competition and competitions in succeeding years in the **Federal Register** (60 FR 27812–27814). In response to the invitation to comment, 34 parties submitted comments. An analysis of the comments received in response to the publication of that notice and of the changes made to the selection criteria, administrative cost cap, and definition

since publication of the notice of proposed selection criteria and proposed definition, is published as an appendix to this notice.

School-to-Work Local Partnership Grants— Administrative Cost Cap

The Departments are applying the 10 percent cap on administrative costs contained in section 215(b)(6) of the Act to local partnerships receiving grants directly under this competition. Section 215(b)(6) of the Act applies the 10 percent administrative cap to subgrants received by local partnerships from a State. The Departments have concluded that applying the 10 percent cap to local partnerships under Title III of the Act is consistent with the Act's intent and its broader limitations on administrative costs. Further, this limitation is consistent with section 305 of Title III, which requires conformity between School-to-Work Opportunities plans of local partnerships and State School-to-Work Opportunities plans.

Definition

All definitions in the Act apply to local School-to-Work Opportunities systems funded under this and future Local Partnership Grant competitions. Since the Act does not contain a definition of the term ''administrative costs'' as used in section 217 of the Act, the Departments will apply the following definition to this and future competitions for Local Partnership Grants.

The term ''administrative costs'' means the activities of a local partnership that are necessary for the proper and efficient performance of its duties under the Local Partnership Grant pursuant to the School-to-Work Opportunities Act and that are not directly related to the provision of services to participants or otherwise allocable to the program's allowable activities listed in section 215(b)(4) and section 215(c) of the Act. Administrative costs may be either personnel or non-personnel costs, and may be either direct and indirect. Costs of administration include those costs that are related to this grant in such categories as—

A. Costs of salaries, wages, and related costs of the grantee's staff engaged in—

- Overall system management, system coordination, and general administrative functions;
- Preparing program plans, budgets, and schedules, as well as applicable amendments;
- Monitoring of local initiatives, pilot projects, subrecipients, and related systems and processes;
- Procurement activities, including the award of specific subgrants, contracts, and purchase orders;
- Developing systems and procedures, including management information systems, for ensuring compliance with the requirements under the Act;
- Preparing reports and other documents related to the Act; and
- Coordinating the resolution of audit findings;

B. Costs for goods and services required for administration of the School-to-Work Opportunities system;

C. Costs of system-wide management functions; and

D. Travel costs incurred for official business in carrying out grants management or administrative activities.

Selection Criteria

Under the School-to-Work Opportunities Local Partnership Grant competition, the Departments will use the following selection criteria in evaluating applications and will utilize a peer review process in which review teams, including peers, will evaluate applications using the selection criteria and the associated point values. The Departments will base final funding decisions on the ranking of applications as a result of the peer review, and such other factors as replicability, sustainability, innovation, geographic balance, and diversity of system approaches.

Selection Criterion 1: Comprehensive Local School-to-Work Opportunities System (40 Points)

Considerations: In applying this criterion, reviewers will consider—

A. *20 Points*. The extent to which the partnership has designed a comprehensive local School-to-Work Opportunities plan that—

- Includes effective strategies for integrating school-based and work-based learning, integrating academic and vocational education, and establishing linkages between secondary and postsecondary education;
- Is likely to produce systemic change that will have substantial impact on the preparation of all students for a first job in a high-skill, high-wage career and in increasing their opportunities for further learning;
- Ensures all students will have a full range of options, including options for higher education, additional training and employment in high-skill, high-wage jobs;
- Ensures coordination and integration with existing school-to-work programs, and with related programs financed from State and private sources, with funds available from Federal education and training programs (such as the Job Training Partnership Act and the Carl D. Perkins Vocational and Applied Technology Education Act); and where applicable, communities designated as Empowerment Zones or Enhanced Enterprise Communities (EZ/EEC);
- Serves a geographical area that reflects the needs of the local labor market, and is able to adjust to regional structures that the State School-to-Work Opportunities plan may identify; and
- Targets occupational clusters that represent growing industries in the partnership's geographic area; and, where applicable, demonstrates that the clusters are included among the occupational clusters being targeted by the State School-to-Work Opportunities system.

B. *20 Points*. The extent to which the partnership's plan demonstrates its capability to achieve the statutory requirements and to effectively put in place the system components in Title I of the School-to-Work Opportunities Act, including—

- A work-based learning component that includes the statutory ''mandatory activities'' and that contributes to the transformation of workplaces into active learning components of the education system through an array of learning experiences such as mentoring, job-shadowing, unpaid work experiences, school-sponsored enterprises, and paid work experiences;
- A school-based learning component that provides students with high-level academic and technical skills consistent with academic standards that the State establishes for all students, including, where applicable, standards established under the Goals 2000: Educate America Act;
- A connecting activities component to provide a functional link between students' school and work activities, and between workplace partners, educators, community organizations and other appropriate entities;
- Effective processes for assessing skills and knowledge required in career majors, and issuing portable skill certificates that are benchmarked to high-quality standards such as those States will establish under the Goals 2000: Educate America Act, and for periodically assessing and collecting information on student outcomes, as well as a realistic strategy and timetable for implementing the process in concert with the State.
- A flexible School-to-Work Opportunities system that allows students participating in the local

system to develop new career goals over time, and to change career majors; and

• Effective strategies for: providing staff development for teachers, worksite mentors and other key personnel; developing model curricula and innovative instructional methodologies; expanding career and academic counseling in elementary and secondary schools; and utilizing innovative technology-based instructional techniques.

Selection Criterion 2: Quality and Effectiveness of the Local Partnership (20 Points)

Considerations: In applying this criterion, reviewers will refer to section 4(11) of the Act and consider—

• Whether the partnership's plan demonstrates an effective and convincing strategy for continuing the commitment of required partners and other interested parties in the local School-to-Work Opportunities system. As defined by the Act, partners must include employers, representatives of local educational agencies and local postsecondary educational institutions (including representatives of area vocational education schools, where applicable), local educators (such as teachers, counselors, or administrators), representatives of labor organizations or nonmanagerial employee representatives, and students, and may include other relevant stakeholders such as those listed in section 4(11)(B) of the Act, including employer organizations, community-based organizations, national trade associations working at the local levels, industrial extension centers, rehabilitation agencies and organizations, registered apprenticeship agencies, local vocational education entities, proprietary institutions of higher education, local government agencies, parent organizations, teacher organizations, vocational student organizations, private industry councils under JTPA, federally recognized Indian tribes, Indian organizations, and Alaska Native villages, and Native Hawaiian entities.

• Whether the partnership's plan demonstrates an effective and convincing strategy for continuing the commitment of workplace partners and other interested parties in the local School-to-Work Opportunities system;

• The effectiveness of the partnership's plan to include private sector representatives as joint partners with educators in both the design and the implementation of the local School-to-Work Opportunities system;

• The extent to which the local partnership has developed strategies to provide a range of opportunities for workplace partners to participate in the design and implementation of the local School-to-Work Opportunities system, including membership on councils and partnerships; assistance in setting standards, designing curricula, and determining outcomes; providing worksite experiences for teachers; helping to recruit other employers; and providing worksite learning activities for students such as mentoring, job shadowing, unpaid work experiences, and paid work experiences;

• The extent to which the roles and responsibilities of the key parties and any other relevant stakeholders, are clearly defined and are likely to produce the desired changes in the way students are prepared for the future.

• The extent to which the partnership demonstrates the capacity to build a quality local School-to-Work Opportunities system;

• Whether the partnership has included methods for sustaining and expanding the partnership, as the program expands in scope and size.

Selection Criterion 3: Participation of All Students (15 Points)

Considerations: In applying this criterion, reviewers will refer to the definition of the term ''all students'' in section 4(2) of the Act, and consider—

• The extent to which the partnership will implement effective strategies and systems: to provide all students with equal access to the full range of program components specified in sections 102 through 104 of the Act and related activities such as recruitment, enrollment and placement activities; and to ensure that all students have meaningful opportunities to participate in School-to-Work Opportunities programs;

• Whether the partnership has identified potential barriers to the participation of any students, and the degree to which it proposes effective ways of overcoming these barriers;

• The degree to which the partnership has developed realistic goals and methods for assisting young women to participate in School-to-Work Opportunities programs leading to employment in high-performance, high-paying jobs, including non-traditional jobs;

• The partnership's methods for ensuring safe and healthy work environments for students, including strategies for encouraging school to provide students with general awareness training in occupational safety and health as part of the school-based learning component, and for encouraging workplace partners to provide risk-specific training as part of the work-based learning component, as well the extent to which the partnership has developed realistic goals to ensure environments free from racial and sexual harassment;

• The extent to which the partnership's plan provides for the participation of a significant number or percentage of students in School-to-Work Opportunities activities listed under Title I of the Act.

Selection Criterion 4: Collaboration With State (15 Points)

Considerations: In applying this criterion, reviewers will consider—

• The extent to which the local partnership has effectively consulted with its State School-to-Work Opportunities Partnership, and has established realistic methods for ensuring consistency of its local strategies with the statewide School-to-Work Opportunities system being developed by that State Partnership;

• Whether the local partnership has developed a sound strategy for integrating its plan, as necessary, with the State plan for a statewide School-to-Work Opportunities system;

• The extent to which the local partnership has developed effective processes through which it is able to assist and collaborate with the State in establishing the statewide School-to-Work system, and is able to provide feedback to the State on their system-building process.

• Whether the plan includes a feasible workplan that describes the steps that will be taken in order to make the local system part of the State School-to-Work Opportunities System, including a timeline that includes major planned objectives during the grant period.

Selection Criterion 5: Management Plan (10 Points)

Considerations: In applying this criterion, reviewers will consider—

• The feasibility and effectiveness of the partnership's strategy for using other resources, including private sector resources, to maintain the system when Federal resources under the School-to-Work Opportunities Act are no longer available.

• The extent to which the partnership's management plan anticipates barriers to implementation and proposes effective methods for addressing barriers as they arise.

• Whether the plan includes feasible measurable goals for the School-to-Work Opportunities system, based on performance outcomes established under section 402 of the Act, and an effective method for collecting

information relevant to the local partnership's progress in meeting its goals.

- Whether the plan includes a regularly scheduled process for improving or redesigning the School-to-Work Opportunities system based on performance outcomes established under section 402 of the Act.
- The extent to which the resources requested will be used to develop information, products and ideas that will assist other States and local partnerships as they design and implement local systems.
- The extent to which the partnership will limit equipment and other purchases in order to maximize the amounts spent on delivery of services to students.

Dated: September 1, 1995.

Tim Barnicle,

Assistant Secretary for Employment and Training, Department of Labor.

Patricia McNeil,

Acting Assistant Secretary for Vocational and Adult Education, Department of Education.

Appendix—Analysis of Comments and Changes—Administrative Costs

10 Percent Cap on Administrative Costs

Comment: Eleven commenters suggested that the proposed 10 percent cap on administrative costs was too low. Several of the commenters felt that the cap should be set at a higher level, such as 15 percent or 20 percent. Other commenters felt that the cap should be set on a flexible scale that would fluctuate according to the size of the grant award. Many commenters felt that the 10 percent cap on administrative costs would ultimately undermine local efforts to build and sustain a strong school-to-work implementation effort, and that it would sacrifice the quality and effectiveness of the local partnerships. Finally, one commenter felt that School-to-Work Opportunities systems in rural areas would have an especially difficult time being able to stay within the 10 percent cap on administrative costs.

Discussion: The Departments have concluded that applying the 10 percent cap to Title III grants awarded to local partnerships is consistent with the Act's broader limitations on administrative costs, with the 10 percent cap imposed on local partnerships receiving School-to-Work Opportunities subgrants from States, and with section 305 of Title III, which requires conformity between School-to-Work Opportunities plans of local partnerships and State School-to-Work Opportunities plans.

Changes: None.

Definition of Administrative Costs

Comment: Twelve commenters suggested that changes be made to the definition of the term ''administrative costs.'' Some of these commenters felt that evaluation and monitoring are functions so central to the local partnerships' ability to implement systemic change that they should be excluded from the definition of administrative costs. One of these commenters also felt that language should be added that would specifically outline allowable activities. Another commenter felt that the definition of the term ''administrative costs'' under EDGAR should be used.

Discussion: The Departments chose to create a new definition of administrative costs rather than use a generic definition such as the one contained in EDGAR in order to address the unique nature of the Act. This definition was established as part of the 1995 School-to-Work Opportunities State Implementation grant process. It should be noted that activities that are directly related to the provision of services to participants or otherwise allocable to the program's allowable activities under the grant are not defined as administrative costs. The Departments believe that since the definition specifically states that activities under section 215(b)(4) and 215© of the Act are not administrative costs, there is no need to mention specific activities such as the provision of technical assistance or developing model curriculum. The Departments believe that the independent evaluation function is especially critical because of the need for an ongoing process of measuring system effectiveness and therefore have not included it in the definition of the term ''administrative costs.'' The Departments believe, however, that monitoring and establishing compliance systems are activities appropriately charged to the administrative cost category.

Changes: None.

Equipment Cost as an Administrative Cost

Comment: Three commenters asked for clarification as to whether equipment cost is an administrative cost, especially in relation to the last bullet point under selection criterion 5, which asks reviewers to consider the extent to which a local partnership will limit equipment purchases in order to maximize the amounts spent on direct delivery of students.

Discussion: The Departments believe that equipment purchased for the purpose of administering the School-to-Work Opportunities system is an administrative cost, and therefore is subject to the 10 percent cap. However, equipment purchased for classroom instructional use would not be subject to the 10 percent cap.

Changes: None.

Suggested Changes to the Structure of the Notice

Need to Include Sections of the Act in the Notice

Comment: One commenter believed that the selection criteria should more exactly reiterate key components contained in the Act in Title I, sections 101–104 (''General Program Requirements'' and basic program components).

Discussion: While the Departments concur with the commenter on the importance of these provisions, they do not believe it is necessary to restate in the notice most of the legislative language emphasized by the commenter. The notice advises local partnerships that applications must meet all the requirements of the Act, reiterates that all definitions in the Act apply to systems funded under the Local Partnership Grant competitions, and emphasizes, under Criterion 1, the need for local partnership plans to demonstrate consistency with all statutory requirements and with all system components in Title I of the Act. Therefore, the Departments strongly encourage applicants to refer to the Act as well as the criteria in developing School-to-Work Opportunities plans that reflect the full intent of the law. The Departments wish to assure the commenter that panelists reviewing the applications are selected for their understanding of the School-to-Work Opportunities Act, are required to participate in a carefully designed orientation, and will be directed to score applications based on the criteria, in conjunction with the requirements of the Act.

Changes: None.

Distribution of Points

Comment: One commenter questioned the distribution of points in this section, and believed that Criterion 1 B, under Comprehensive Local School-to-Work Opportunities System, should receive more weight than 20 out of 100 points. This commenter also indicated that Criterion 3, ''Participation of All Students,'' should receive more than 15 points. Another commenter recommended making Criterion 3 a ''threshold criterion''. This commenter felt that unless this component was adequately addressed, no local partnership should be considered for funding.

Discussion: In response to this comment, the Departments gave careful consideration to the distribution of points among the selection criteria, and have concluded that the distribution provided for in the notice results in the most appropriate balance among the criteria. The Departments are committed to assisting partnerships develop and implement school-to-work systems that provide opportunities to all students, but they do not agree that Criterion 3 should be replaced with a threshold criterion or an eligibility requirement, or that either of these would be consistent with the Act. Criterion 3 requires that a partnership describe its strategies for effectively ensuring opportunities for all students to participate in the school-to-work system, and to identify ways of overcoming barriers to the participation of any students. This criterion now states that the partnership's strategies must address equal access to the full range of components for all students. The Departments again wish to emphasize that to receive the maximum points for Criterion 3, applicants must not neglect the needs of any students, and must convincingly describe how the School-to-Work Opportunities system will provide the same options and produce the same results for all participating students, while recognizing that groups of students have different needs and, therefore, that specific strategies may be required for the various groups listed in the definition of ''all students.'' Applications that fail to address the critical needs of any category of

student and fail to develop effective strategies in response to identified student barriers will not be as competitive as those that have comprehensive and effective strategies for all students. To be competitive, partnerships that have not fully implemented all components of the strategies devised for all students should at least have established a timetable for putting these components in place within a reasonable period of time.

Changes: None.

Restructuring Criteria

Comments: Several commenters recommended adding or restating key concerns under several criteria, changing the order of the bullets under a given criterion, or moving bullets from under one criterion heading to another. One commenter suggested moving the first bullet under Selection Criterion 3 concerning strategies for ensuring that all students have effective and meaningful opportunities to participate in the local School-to-Work Opportunities system to Selection Criterion 1(B). Another commenter suggested reordering the bullets under Selection Criterion 2 in order to enhance the continuity of the section. This commenter also felt that Selection Criterion 1(A) should be made a part of Selection Criterion (2) since geographic coverage is more closely related to the quality and effectiveness of the local partnership.

Discussion: The Departments recognize that there are certain key elements that have a direct bearing on several aspects of local School-to-Work Opportunities systems. The notice has been carefully developed to weave these issues throughout the notice while still capturing the major points most germane to each specific criterion. However, the Departments do not believe it is always necessary to restate these issues as bullet points under multiple criteria. As discussed in response to another comment, applicants are encouraged to refer to the Act as well as the notice in order to develop School-to-Work Opportunities plans that fully implement the law. In response to suggested changes in sequence and placement, the order of importance, or that a greater percentage of the maximum points for that criterion is to be assigned to any particular bullet, all bullets under each selection criterion will be duly considered by the reviewers. The Departments again wish to emphasize that all applications are subject to a thorough review. Panelists are selected for their expertise in school-to-work, receive a thorough orientation, and are grouped in carefully balanced teams representing a range specializations and interests, to ensure that decisions reflect the full intent of the Act.

Changes: None.

Selection Criterion 1: Comprehensive Local School-to-Work Opportunities System (A)

Coordination and Integration With Existing School-to-Work Programs

Comment: Four commenters felt that language should be added that would ensure coordination with Federal systems change grants authorized under the Individuals with Disabilities Education Act (IDEA). One commenter felt that specific reference should not be made to the Job Training Partnership Act (JTPA) and the Carl D. Perkins Vocational and Applied Technology Education Act.

Discussion: Achieving comprehensive reform will require local partnerships to coordinate and integrate a great number and variety of initiatives having training and education related goals. The Departments agree that the lessons learned from initiatives and programs that are related to School-to-Work should be incorporated in the local partnership's plan. The fourth bullet under Selection Criterion 1(A) is intended to encourage local partnerships to review the many Federal, State and local programs and initiatives and to develop plans for creating mutually supportive strategies.

Changes: None.

Difficulty of Rural Areas in Targeting High-wage, High-skill Jobs

Comment: One commenter was concerned that the emphasis placed throughout the notice on high-wage, high-skill jobs would favor urban partnerships over rural partnerships, which may be unable to offer paid work experiences or match metropolitan pay schedules. This commenter pointed out that rural communities have limited access to such paid jobs due to geographic isolation, slow economic growth, and comparatively lower wages for most employees. The commenter suggested that points be awarded for plans developed by rural School-to-Work consortia to allow employees to live in their home community while commuting to high-wage, high-skill jobs in neighboring communities.

Discussion: The Departments are committed to a fair and equitable review of all applications, and recognize that, in order to be successful, a local School-to-Work system must respond to the needs and conditions of the community for which it has been developed. While the Departments recognize the unique challenges faced by rural areas, they do not feel that developing School-to-Work systems tailored to rural locations is incompatible with the emphasis on preparing students for high-skill, high wage jobs as given in the Act. They encourage local partnerships in these areas to design School-to-Work systems that enable young people to explore as broad a range of career options as possible, and develop the skills to compete in a global economy, wherever they ultimately reside and work. The Departments are also interested in applications that link innovative education strategies with local workforce development and economic development strategies. The Departments wish to clarify that this emphasis on high-wage, high-skill jobs should not place rural partnerships at a disadvantage, since reviewers rank each application against the criteria, not against other applications. While the notice will not reserve specific points for rural strategies such as the one suggested by the commenter, reviewers will consider the quality of the partnership's plan in light of what is feasible for that community, as described in the application. Therefore, the extent to which an application describes what is possible and appropriate for the partnership, as well as the partnership's strategies to provide students with opportunities to explore a range of occupational clusters and acquire skills relevant to high-wage, high-skill jobs, will determine the number of points awarded. Rural partnerships that present this information thoroughly and convincingly will score as highly against the criteria as partnerships with a greater range of opportunity due to higher concentrations of business and industry.

Changes: None.

Selection Criterion 1: Comprehensive Local School-to-Work Opportunities System (B)

Need to More Broadly Define Entities to be Linked in the Connecting Activities Component

Comments: Two commenters felt that this criterion described the connecting activities component too narrowly. The commenters pointed out that, while building links with employers (as highlighted in the third bullet) is necessary to successful school-to-work transitions, this group is not the only one that must be linked in a successful system. The commenters urged that this bullet be broadened to emphasize the need for links with all workplace partners, as well as community organizations.

Discussion: The Departments agree with the commenters that a successful connecting activities component maintains a continuous feedback loop between the school and work communities, and that work communities include labor organizations and non-managerial employees as well as employers. The Departments also agree that the connecting activities component should assist students with access to a range of support services, provided through entities like community-based organizations and one-stop career centers.

Changes: The third bullet of Selection Criterion 1(B) has been changed to read: ''A connecting activities component to provide a functional link between students' school and work activities, and between workplace partners, educators, community organizations and other appropriate entities.''

Providing All Students with a Full Range of Options:

Comment: Four commenters suggested that Selection Criteria 1 A and 3 be changed to reflect the language in section 101(5) of the Act regarding the partnership's plan for providing all students with equal access to the full range of program components (including the school-based and work-based learning components) and related activities, such as recruitment, enrollment, and placement activities.

Discussion: The Departments agree with the commenter on the importance of emphasizing the need for strategies to provide all students equal access to the full range of program components, rather than offering any student an abbreviated menu of options.

Changes: The third bullet under Selection Criterion 1(A) has been changed to recognize the importance of all students having equal access to a full range of options. An additional reference has been added to bullet 6 under Selection Criterion 3.

Consistency with Other Initiatives

Comment: One commenter noted references in the notice to the Goals 2000 and Empowerment Zones/Enhanced Enterprise Communities (EZ/EEC) initiatives, and expressed concern that applications from local partnerships in States not currently participating in the Goals 2000 initiative might be less competitive than applications from partnerships in States that are.

Discussion: References in the notice to these and other initiatives are intended to stress the need for coordination of related efforts in the areas of education reform, workforce development, and economic development. A major purpose of the School-to-Work initiative is to unify categorical programs into coherent and comprehensive systems, and to avoid duplication of effort across various agencies and funding streams. The EZ/EEC initiative, for which the Department of Housing and Urban Development and the Department of Agriculture are the lead agencies, is an economic development initiative targeting urban and rural areas, with a major focus on rebuilding inner cities. Partnerships are funded against an approved strategic plan, and all proposals include an education component. Similarly, the Goals 2000: Educate America Act provides a broad vehicle for education reform supportive of the objectives of School-to-Work. Where these initiatives coincide at the local level, it is important that they be coordinated. However, participation in activities under both Goals 2000 and School-to-Work is strictly voluntary, and a State's participation in Goals 2000 is in no way a condition for award of a School-to-Work Local Partnership Grant. By including references to Goals 2000, the Departments intend to emphasize the need for local systems to incorporate high-quality academic and skill standards consistent with any standards developed by the State as part of education reform or restructuring, and for local partnership activities to coincide with the State or region's overall vision for improving education and employment opportunities.

Changes: None.

Selection Criterion 2: Quality and Effectiveness of the Local Partnership

Key Stakeholders

Comment: Several commenters felt this section focused too narrowly on the role of employers, and did not adequately convey the range of required partners and other interested parties that are given in the Act. Commenters were particularly concerned about the comparative lack of emphasis on union representatives and frontline workers, teachers, and community-based organizations as members of local partnerships. The commenters felt that these groups should be explicitly identified in this criterion, since their involvement is as vital to system development and implementation as that of employers. Various suggestions were made as to how the bullets under this criterion could be amended to be more inclusive of key stakeholders. One commenter noted that students, also listed as required members of local partnerships in the Act, are unlikely to be involved as partners in decision-making, and recommended specific language emphasizing their participation.

Discussion: This criterion immediately refers reviewers to the definitions of local partners given in the Act. However, the Departments agree that it would be useful to list in Selection Criterion 2 all the parties referred to in sections 4(11)(A) and (B). In this way, the criterion will not appear to omit any of the entities that have important contributions to make to a comprehensive local School-to-Work system. It is vitally important to the success of local School-to-Work systems that key local groups, including those highlighted by the commenters, be involved at every stage of system development and implementation. The Departments wish to emphasize that only those applications that involve all key parties substantively and continuously, effectively incorporating their perspectives and strengths in the system plan, will be competitive.

Changes: The first bullet of Criterion 2 now lists the required members of local partnerships as given in section 4(11)(A) of the Act, including representatives of organized labor or nonmanagerial employees, teachers, and students. This first bullet also lists the examples of interested parties noted in section 4(11)(B), including community-based organizations. Subsequent bullets refer to the lists given in the first bullet, and where appropriate, the term ''workplace partners'' has been substituted for ''employers''. Similar clarifications were included in the final notice for the State Implementation Grants competition.

Role of Private Industry Councils

Comment: Three commenters suggested that it should not be necessary to form a new local partnership when the Private Industry Councils are able to perform the function. They commented that not including the Private Industry Councils would be detrimental to the School-to-Work Opportunities system.

Discussion: The Departments agree that the Private Industry Councils, as established under section 102 of the Job Training Partnership Act, are key partners in the School-to-Work Opportunities initiative. The Departments believe that Private Industry Councils can play many important roles in local School-to-Work systems, and encourage their participation in local partnerships. However, in order to be eligible for a grant under this notice, a local partnership must include all of the entities included in section 4(11)(A) of the Act, and may include other parties such as those listed in section 4(11)(B). The Departments believe that it is up to each local community to determine which parties are the most appropriate for their local partnership, and that the Act is structured in a way that allows them such flexibility. The Departments believe that the criteria as written adequately allow for the inclusion of the Private Industry Councils in local School-to-Work Opportunities system-building activities.

Changes: None.

Selection Criterion 3: Participation of All Students

Define ''All Students''

Comment: Several commenters suggested that a definition of the term ''all students'' be added to the notice or that the specific student categories be defined.

Discussion: Although all definitions and requirements of the Act apply, the Departments agree that it would be helpful to remind applicants that the Act's definition of the term ''all students'' applies to this competition.

Changes: A reference to the definition of ''all students'' in Section 4(2) of the Act has been included in Criterion 3. Inclusion of Safety Skills in the Work-based and School-based Components.

Comment: One commenter recommended that specific language be added to the first and second bullets in this section, requiring the acquisition of skills relating to safety as elements of the school-based and work-based learning components.

Discussion: The Departments strongly agree that issues of health and safety are important to any School-to-Work system. In the fourth bullet under Criterion 3, ''Participation of All Students,'' reviewers will consider the partnership's methods for ensuring safe and healthy work environments for students. Many activities may be a part of strategies for ensuring that students are provided with such environments. The Departments believe that work-based and school-based modules that inform students of safety issues, as well as their rights and responsibilities at the workplace, are among the methods that would appropriately address this criterion. For example, the work-based component could include risk-specific training for students participating in learning experiences at the work site. Outcomes of this training could include a student's being able to demonstrate an understanding of: specific tasks or operations associated with the learning experience that pose risks; proper use of tools, devices, and equipment provided to control identified risks; procedures for responding to any potential hazards the youth identifies; and procedures for reporting illness and injury. The school-based learning component can provide students with general awareness training in occupational safety and health. Outcomes of this training might include a student's being able to describe the general nature and types of work-related health problems, describe the risk factors associated with the most common jobs held by young workers, describe the concept of hazard control strategies and give examples, list the jobs prohibited to young workers by applicable local, State, and Federal laws, and describe the procedures and policies regarding the reporting of work-related diseases and injuries.

Changes: While the Departments do not believe it is appropriate for them to define the strategies that all partnerships must use to ensure safe and healthy work environments, the fourth bullet has been modified to clarify that these strategies should include both the school-based and work-based components, making the Local Partnership notice consistent with the State Implementation Grant notice published in the **Federal Register** of May 18.

Environments Free From Harassment

Comment: One commenter suggested that partnerships be required to describe how they will ensure that student environments are free from racial and sexual harassment.

Discussion: The Departments agree with the commenter on the importance of provisions to ensure that School-to-Work activities take place in atmospheres conducive to learning, and free from racial and sexual harassment. In response to public comment, similar changes were made to the State Implementation Grants notice published in the **Federal Register** on May 18, 1995. Requiring reviewers to consider whether applications present strategies for harassment-free environments will emphasize the importance of this issue and ensure consistency between the ''Participation of All Students'' sections of the Local Partnership and State notices.

Changes: Under the fourth bullet of Criterion 3, reviewers will consider the extent to which a partnership has developed realistic goals to ensure environments free from racial and sexual harassment, as well as to guarantee safe and healthy work environments.

Selection Criterion 4: Collaboration With State

State Ability to Sustain Local Partnership

Comment: One commenter suggested that a section be added to this criterion related to the ability of the State School-to-Work Opportunities system to sustain a local partnership once Federal funding to that local partnership has ended. The commenter suggested that a long term sustainability plan that would include the integration of a variety of Federal, State, and local funding streams should be included in this criterion.

Discussion: The Departments expect a State School-to-Work Opportunities System to sustain local partnerships funded under section 302(a) of the Act once Federal funding to that local partnership has ended. However, the Departments are not in a position to prescribe at what level the partnership shall be sustained.

Changes: None.

Selection Criterion 5 Management Plan:

Evaluation

Comments: Three commenters suggested that the bullets under Selection Criterion 1 and 4, regarding performance outcomes, should be more specific. One commenter suggested that language be added stating that performance outcomes should include measures of the extent to which special populations are included. Two commenters felt that it was important to require that both individual and aggregate data be collected.

Discussion: The Departments believe that States and local partnerships should have the flexibility to design evaluations appropriate to their own needs and goals and encourage local partnerships to work closely with their State when developing performance outcomes and evaluation plans. Section 402 of the Act describes the overall framework and emphasis of the performance measurement and evaluation systems for the School-to-Work Opportunities initiative.

Changes: None.

Limit on Equipment Purchases

Comment: One commenter felt that the bullet point under Criterion 4 regarding the limitation of equipment purchases would keep rural partnerships from purchasing distance learning equipment which can often play a critical role in the implementation School-to-Work Opportunities systems in rural areas.

Discussion: The Departments agree that distance learning technology can play a key role in the implementation of local School-to-Work systems in rural areas. Bullet six under Criterion 1(B) states that the Departments are looking for effective strategies for utilizing innovative technology-based instructional techniques such as distance learning. However, applicants are reminded that their overall goal should be to maximize direct services to students. Applicants proposing equipment purchases such as distance learning systems should be sure that such purchases clearly link back to the overall purpose and design of the proposed local School-to-Work Opportunities system. Applicants should also be aware that such purchases would be seen by the Departments as one-time expenditures and would not be refunded in any future years of funding.

Changes: None.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION
BUDGET INFORMATION
NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/95

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):
For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):
Show the total budget request for each project year for which funding is requested.

Line 12, column (f):
Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Instructions for ED Form 524 (cont.)

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e):
For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e):
Show the total matching or other contribution for each project year.

Line 12, column (f):
Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000–01–C

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1830–0530, Washington, D.C. 20503.

(Information collection approved under OMB control number 1830–0530, Expiration date: 6/30/98.)

BILLING CODE 4000–01–P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*

b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C.1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ **Page** _____ **of** _____

Authorized for Local Reproduction
Standard Form - LLL-A

BILLING CODE 4000–01–C

School-to-Work State Contacts

Alabama

Stephen B. Franks, Department of Education, 50 N. Ripley St., Montgomery, AL 36130–3901, Telephone: 205–242–9111, Fax: 205–242–0234

Alaska

Susan Doherty or Roxanne Sinz, Alaska School-to-Work Project, c-o Unocal Corporation, P.O. Box 196247, Anchorage, AK 99519–6247, Telephone: 907–263–7638 or 7623, Fax: 907–263–7698

Arizona

Susan Leeper, School-to-Work Coordinator, Governor's Office of Community and Family Programs, 1700 West Washington, Room 320, Phoenix, AZ 85007, Telephone: 602–542–3461, Fax: 602–542–3520

Arkansas

Mary Swoope, School-to-Work Coordinator, Arkansas Department of Education, Vocational and Technical, Education Division, Three Capitol Mall, Little Rock, AR 72201–1083, Telephone: 501–682–1666, Fax: 501–682–1509

California

Robert J. Hotchkiss, Employment Development Dept., Program and Policy Development Branch, 800 Capitol Mall, MIC88, P.O. Box 826880, Sacramento, CA 94280–0001, Telephone: 916–654–8656, Fax: 916–654–5981

Colorado

Alaine Ginocchio, Governor's Office, 136 State Capitol, Denver, CO 80203, Telephone: 303–866–2155, Fax: 303–866–2003

Connecticut

Susan Vinkowski, Department of Education, Bureau of Applied Curriculum, Technology and Career Information, Middletown, CT 06457, Telephone: 203–638–4054, Fax: 203–638–4062

Delaware

Dr. Nikki Castle, Executive Director, Delaware School-to-Work, Delaware Chamber of Commerce, 1201 N. Orange, Wilmington, DE 19801, Telephone: 302/577–3762, Fax: 302–577–3281

District of Columbia

Dr. Deborah Evans, Executive Office of the Mayor, 441 North 4th Street, NW, Suite 510S, Washington, D.C. 20001, Telephone: 202–727–2578, Fax: 202–727–3486

Florida

Michael Brawer, School-to-Work Program Coordinator, Department of Education, Florida Education Ctr., Room 1232, Tallahassee, FL 32399, Telephone: 904–488–7394, Fax: 904–487–0426

Georgia

Gail Trapnell, GA School-to-Work Transition Project Administrator, 148 International Blvd., NE, Suite 638, Atlanta, GA 30303, Telephone: 404–657–6740, Fax: 404–656–2683

Idaho

Karen M. Fraley, Idaho School-to-Work, IBM Complex, 500 East Baybrook Court, Boise, ID 83706, Telephone: 208–338–8633

Illinois

Fran Beaumann, Dept. of Adult, Vocational and Technical Education, 100 N. First St., E–426, Springfield, IL 62777–0001, Telephone: 217–782–4620, Fax: 217–782–9224

Indiana

Peggy O'Malley, Deputy Commissioner, Dept. of Workforce Development, Indiana Government Center South, SE302, 10 North Senate Avenue, Indianapolis, IN 46204, Telephone: 317–232–1832, Fax: 317–233–4793

Iowa

Harriet Howell Custer, Administrator, Division of Community Colleges, Department of Education, Grimes State Office Building, Des Moines, IA 50319–0146, Telephone: 515–281–8260, Fax: 515–281–6544

Hawaii

Kenneth Yamamoto, Assistant Superintendent, Department of Education, P.O. Box 2360, Honolulu, HI 96804, Telephone: 808–586–3446, Fax: 808–586–3429

Kansas

Lee Droegemuller, Commissioner of Education, Kansas State Board of Education, 120 SE 10th Avenue, Topeka, KS 66612–1182, Telephone: 913–296–3202, Fax: 913–296–7933

Kentucky

Ruth Bunch or Beth Brinly, Office of School-to-Work, Berry Hill Annex, 700 Louisville Road, Frankfort, KY 40601, Telephone: 502–564–5901, Fax: 502–564–5904

Louisiana

Chris W. Weaver, State Director, Secondary Vocational Education, P.O. Box 94064, Baton Rouge, LA 70804–9064, Telephone: 504–342–5173, Fax: 504–342–2059

Maine

Christopher D. Lyons, Maine Department of Education, State House Station 23, Augusta, ME 04333, Telephone: 207–287–5854

Massachusetts

John Niles, Executive Director, Massachusetts Office for, School-to-Work Transition, 101 Summer Street, Boston, MA 02110, Telephone: 617–451–5130, Fax: 617–451–1291

Michigan

Tom Benton, Michigan Jobs Commission, Victor Office Center, 3rd Floor, 201 N. Washington Square, Lansing, MI 48913, Telephone: 517–373–6432, Fax: 517–373–8179

Minnesota

John W. Mercer or Thomas Berg, Department of Education, 550 Cedar Street, St. Paul, MN 55101, Telephone: 612–297–3115 or 282–6277, Fax: 612–297–7201

Mississippi

Worth E. Haynes, Vocational and Technical Ed., Department of Education, P.O. Box 771, Jackson, MS 39205–0771, Fax: 207–287–5894

Maryland

Lynne Gilli, Branch Chief of Career and Technology Services, Maryland State Dept. of Education, 200 W. Baltimore Street, Baltimore, MD 21201, Telephone: 410–767–0170, Fax: 410–333–2099

Montana

Jane A. Karas, Office of the Commissioner of Education, 2500 Broadway, Helena, MT 59620–3101, Telephone: 406–444–0316, Fax: 406–444–1469

Nebraska

Darl Naumann, NE Dept. of Economic Development School-to-Work, P.O. Box 94666, Lincoln, NE 68509–4666, Telephone: 402–471–3741, Fax: 402–471–3778

Nevada

Barbara Weinberg, Dept. of Employment, Training and Rehabilitation, 400 W. King, Suite 108, Carson City, NV 89710, Telephone: 702–687–4310, Fax: 702–687–8917, Telephone: 601–359–3089, Fax: 601–359–2326

Missouri

Don Eisinger, Missouri Dept. of Elementary and Secondary Education, P.O. Box 480, Jefferson City, MO 65102, Telephone: 314–751–7563, Fax: 314–526–3897

New Mexico

James Jimenez, Department of Finance and Administration, 180 Battaan Memorial Building, Santa Fe, NM 87503, Telephone: 505–827–4985, Fax: 505–827–4984

New York

Johanna Duncan-Poitier, Assistant Commissioner, New York State Education Dept., 89 Washington Avenue, Education Bldg., Rm 319EB, Albany, NY 12234, Telephone: 518–474–8892, Fax: 518–474–0319

North Carolina

Loretta Martin, Governor's Comm. on Workforce Preparedness, 116 West Jones Street, Raleigh, NC 27603, Telephone: 919–715–3300, Fax: 919–715–3974

New Hampshire

Stephen B. Bos, New Hampshire Job Training Council, 64 Old Suncook Road, Concord, NH 03301, Telephone: 603–228–9500, Fax: 603–228–8557

New Jersey

Thomas Henry, Director, Office of STW Initiatives, New Jersey Dept. of Education, CN500, Trenton, NJ 08625–0550, Telephone: 609–633–0665, Fax: 609–633–0568

Oklahoma

Dr. Richard Makin, State Coordinator of School-to-Work, Department of Vocational-Technical Education, 1500 West Seventh Avenue, Stillwater, OK 74074–4364, Telephone: 405–743–5434, Fax: 405–743–5541

Oregon

Bill Brady, Oregon Department of Education, 255 Capitol Street, NE, Salem, OR 97310, Telephone: 503–378–3584, ext. 327, Fax: 503–378–5156

Pennsylvania

Jean Wolfe, Department of Education, 333 Market Street, Tenth Floor, Harrisburg, PA 17126–0333, Telephone: 717–787–5820, Fax: 717–787–7222

North Dakota

Dean Monteith, Admin. for School-to-Work, State Board for Vocational and Technical Education, State Capitol, 15th Floor, Bismarck, ND 58505, Telephone: 701–328–3074, Fax: 701–328–1255

Ohio

Mary A. McCullough, Director, Ohio School-to-Work, 145 South Front Street, Columbus, OH 43215, Telephone: 614–728–4630 or 4631, Fax: 614–466–5025

Rhode Island

Miriam Coleman, Dept. of Employment and Training, 101 Friendship Street, Providence, RI 02903–3740, Telephone: 401–277–3930, Fax: 401–861–8030

or

Frank Santoro, Dept. of Elementary and Secondary Education, 22 Hayes Street, Providence, RI 02908, Telephone: 401–277–2691, Fax: 401–277–2537

South Carolina

Bob Falls, Employment Security Commission, 1550 Gadsden Street, P.O. Box 995, Columbia, SC 29202, Telephone: 803–737–0459

Puerto Rico

Agustin Marquez, Executive Director, School-to-Work, P.O. Box 366955, San Juan, PR 00936–6955, Telephone: 809–745–3478 or 765–3644, Fax: 809–745–3478 or 765–3644

Tennessee

Russell Smith, Department of Education, Division of Vocational and Technical Education, Gateway Plaze Building, 4th Floor, 710 Robertson Parkway, Nashville, TN 37243–0383, Telephone: 615–532–4725, Fax: 615–532–8226

Texas

Ann Dorsey, Texas Council on Workforce and Economic Competitiveness, P.O. Box 2241, Austin, TX 78768–2241, Telephone: 512–912–7150, Fax: 512–912–7172

Utah

Robert Brems, Associate Superintendent, Utah State Office of Education, 250 East 500 South, Salt Lake City, UT 84111, Telephone: 801–538–7841, Fax: 801–538–7868

Vermont

Rich Tulikangas, Office of the Governor, 109 State Street, Montpelier, VT 05609, Telephone: 802–828–3326, Fax: 802–828–3339

South Dakota

Mary Ellen Johnson, School-to-Work Coordinator, Department of Labor, 700 Governors Drive, Pierre, SD 57501, Telephone: 605–773–5017, Fax: 605–773–4211

Washington

Don Walgamott, Office of the Governor, 100 Insurance Building, Olympia, WA 98504–3113, Telephone: 360–586–0828, Fax: 360–586–8380

West Virginia

David A. Mohr, Dept. of Education and the Arts, 1900 Kanawha Blvd., East, Charleston, WV, Telephone: 304–558–2440, Fax: 304–558–1311

Wisconsin

Vicki Poole, Director, Governor's Office for Workforce Excellence, 201 Washington Ave., Room 231, Madison, WI 53707, Telephone: 608–266–0223, Fax: 608–261–6698

Wyoming

Marsha Price, School-to-Work Manager, 6106 Yellowstone Road, Cheyenne, WY 82009, Telephone: 307–632–4907, Fax: 307–637–7773

Virginia

Randolph Beales, Office of the Secretary of Education, VA Business-Education Partnership Program, 200–202 North 9th Street, Richmond, VA 23219, Telephone: 804–692–0244, Fax: 804–692–0430.

[FR Doc. 95–95–22339 Filed 9–7–95; 8:45 am]

BILLING CODE 4000–01–P

federal register

Friday
September 8, 1995

Part VI

Department of Transportation

Federal Aviation Administration

Proposed Policy Regarding Airport Rates and Charges; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 27782]

RIN 2120–AF90

Proposed Policy Regarding Airport Rates and Charges

AGENCY: Department of Transportation (DOT), Federal Aviation Administration (FAA).

ACTION: Supplemental notice of proposed policy; reopening of comment period.

SUMMARY: This document proposes a significant revision of the Policy Regarding Airport Rates and Charges published with request for comment on February 3, 1995. The proposed policy retains the structure and basic approach of the February 3 policy statement, but the strict requirement for equality of fees and costs based on historic cost valuation of assets would be limited to the airfield portion of an airport, and the policy would permit substantial flexibility in the establishment of fees for other aeronautical facilities. The revision reflects public comments received on the February 3 policy statement. This notice announces two public meetings on the proposed policy and reopens the comment period until October 23, 1995.

DATES: Comments must be received by October 23, 1995.

ADDRESSES: Comments should be mailed, in quadruplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–10), Dockets No. 27782, 800 Independence Avenue SW., Washington, DC 20591. All comments must be marked: ''Docket No. 27782.'' Commenters wishing the FAA to acknowledge receipt of their comments must include a preaddressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 27782.'' The postcard will be date stamped and mailed to the commenter.

Comments on this Notice may be examined in room 915G on weekdays, except on Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: John Rodgers, Director, Office of Aviation Policy, Plans and Management Analysis, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591, telephone (202) 267–3274; Barry Molar, Manager, Airports Law Branch, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3473.

SUPPLEMENTARY INFORMATION: Section 113 of the FAA Authorization Act of 1994, Public Law 103–305 (1994 Authorization Act) signed into law on August 23, 1994, 49 U.S.C. 47129, required the Secretary of Transportation to issue standards or guidelines for use in determining the reasonableness of an airport fee. After notice and opportunity for public comment, on January 30, 1995, the Office of the Secretary of Transportation (OST) and the FAA issued a ''Policy Regarding Airport Rates and Charges,'' and requested further public comment on the interim policy as published. Docket No. 27782 (60 FR 6906, February 3, 1995). The comment period on the interim policy closed on May 4.

Comments Received

More than 125 comments were received in response to the February 3 request for comment, including comments received after the close of the comment period. The Department considered all comments, including the late-filed comments. Because the Department is proposing a substantially revised policy statement and publishing the statement for an additional comment period, the Department will include in this supplemental notice only a brief discussion of public comments received on the February 3 policy statement, and will not address the comments in detail at this time. When a final policy statement is published in the **Federal Register**, the Department will include a comprehensive response to public comments received on both the February 3 interim policy and this proposed revision.

Summary of Proposed Changes and Response to Significant Issues Raised

1. Valuation of Assets for Ratesetting Purposes.

The interim policy requires valuation of all airport land and airfield assets at historic cost to the original airport proprietor (Para. 2.4.1). The airport proprietor may use other valuation methods for other assets, but total aeronautical revenue may not exceed total aeronautical cost, based on historic cost asset (HCA) valuation, absent agreement (Para 2.4.1(a)).

Aeronautical users filing comments supported the interim final policy's approach to asset valuation.

Airport operators uniformly criticized the treatment of asset valuation. They argued that, *inter alia,* the combination of the HCA valuation requirement and the total cost cap will disrupt their current practices in leasing nonairfield facilities; will underfinance smaller airports that are unable to use debt-financing to fund capital replacement and improvement; and will cause signatory carriers to pay more than non-signatory carriers under certain residual lease and use agreements. They also argued that the HCA requirement is inconsistent with § 47129's prohibition on setting rates; is inconsistent with Departmental policies on financial self-sustainability of airports; and is inconsistent with an airport proprietor's Constitutional right to earn a reasonable return on investment.

While airport commenters prefer elimination of the HCA valuation requirement for all assets, most (the City of Los Angeles being the primary exception) stated that retention of the HCA valuation requirement for the airfield would be acceptable, because HCA valuation for the airfield reflects common industry practice.

The Department proposes to revise the policy by limiting the HCA valuation requirement in proposed Para. 2.5.1 to airfield assets and by eliminating the total HCA cost cap for aeronautical facilities (Para. 2.4.1(a) of the interim policy). Airfield assets would be defined in the applicability section of the policy statement to include runways, taxiways, nonexclusively leased aprons, land associated with these facilities, and land acquired and held to assure compatibility with airfield operations. If the latter land were developed for compatible, nonairfield uses, the land would be removed from the airfield rate base.

In addition, further guidance would be given on the way airfield land may be included in the rate base (proposed Para. 2.5.1(a)). The cost of land acquired with debt could be included in the rate base by charging all debt service expenditures to the airfield cost center. The cost of land acquired with internally generated funds or donated by the airport proprietor could be recovered by amortization. A new paragraph 2.5.1(b) is proposed to clarify that, while HCA valuation must be used to establish total airfield costs, airport operators may, to enhance the efficient use of the airfield, allocate costs using a reasonable and not unjustly discriminatory methodology that departs from a pro rata division of HCA costs.

A new paragraph 2.6 would be added, providing that fees for other aeronautical services and facilities could be established by any reasonable methodology. As discussed below, the policy would provide for FAA scrutiny

of accumulation of surplus funds attributable to aeronautical revenues, however. The Department does not intend this possible scrutiny to function as an indirect reinstatement of the HCA cost cap.

The proposed revision to the policy is intended to carry out the Department's mandate to adopt a policy that assures that airport fees are reasonable while avoiding unnecessary disruption to long-standing, well-accepted pricing practices, especially for nonairfield assets.

For nonairfield facilities, which may be priced according to any reasonable method, our experience suggests that effective competition generally exists. Fees for such facilities are generally established by agreement between the airport proprietor and aeronautical user based on negotiations. Formal administrative complaints over fees for nonairfield facilities have in almost all instances involved allegations of unjust discrimination—not allegations that nonairfield fees were excessive. Moreover, since 1989, all of those complaints not still pending have been dismissed following investigation. Based on these considerations, we propose to rely on the discipline of competition, in the first instance, rather than detailed prescriptions of permissible charging practices to assure that fees for nonairfield facilities meet the requirements of reasonableness contained in statutes, grant agreements and applicable international aviation agreements. However, the policy would explicitly preserve the authority of the FAA to investigate the accumulation of aeronautical surpluses.

For airfield assets—runways and taxiways—there is greater risk that airport proprietors may enjoy locational monopoly power. The HCA requirement for these assets would guard against any abuse of monopoly power and would conform to general industry practice.

The HCA valuation requirement does not conflict with the statutory prohibition on setting the airport fee. The valuation of airfield assets is but one element in setting a fee. Even with the HCA valuation requirement, the airport proprietor has substantial latitude with respect to those other elements.

Further, the HCA valuation requirement does not amount to a regulatory taking of property. The HCA valuation requirement allows the airport proprietor to fully recover its costs of providing airfield facilities. HCA valuation is one of the methods that has been found reasonable, and hence constitutional, by the courts.

Finally, many of the arguments against the HCA requirement for the airfield were considered and rejected by the Department in its decision on the Los Angeles International Airport (LAX) landing fee dispute. See pages 19–26, Order 95–6–36 (June 30, 1995).

2. Applicability to Airfield and Non-Airfield Assets

As noted above, the Department proposes to modify the interim policy to eliminate the total HCA cap on aeronautical revenues and to permit nonairfield fees to be set according to any reasonable method. In keeping with this change, the provision in the policy requiring that aeronautical revenues not exceed aeronautical costs (Para. 2.1 of the interim policy) would be narrowed to apply to airfield revenues and costs (Proposed para. 2.2). Similarly, the provision specifying in detail the costs that may be included in the rate base (Proposed Para. 2.4) would be modified by adding an exception for nonaeronautical fees determined by other reasonable means as provided in proposed Para. 2.6. The Department relies on market forces in the leasing of nonairfield facilities to assure that aeronautical revenues, averaged over time, will approximate costs, including the airport's capital investment needs. However, it is unrealistic to expect the market to produce fees that exactly equal costs for each particular user during every accounting period.

3. Charging Imputed Interest on Investment of Surplus Aeronautical Revenues

The interim policy provides that airport proprietors could include in the aeronautical rate base the implicit cost of capital (imputed interest) of funds generated from nonaeronautical sources and invested in capital assets for aeronautical use (par. 2.3.1). The interim policy further provides that the Department considers it reasonable to use the rate of interest prevailing at the time of the expenditure on bonds issued by the airport proprietor or another airport with a similar bond rating.

Airport commenters objected to this provision on a number of grounds. They argued that by precluding interest on surpluses generated from aeronautical revenues, the policy creates an incentive to invest such aeronautical surpluses in nonaeronautical assets. They further argued that it will be difficult, if not impossible, in most cases to trace a surplus to nonaeronautical sources. In addition, they argue that an interest rate based on their borrowing costs is unreasonably low, and that a reasonable rate of interest should be based on what the airport proprietor could earn on alternative investments.

Airport users did not object to this provision.

After reviewing the comments and in light of the other revisions to the policy relating to fees for nonairfield services and facilities, the Department proposes to modify the provision on imputed interest. The new provision would permit the airport proprietor to include in the rate base imputed interest on all funds invested in aeronautical facilities except those generated from airfield operations and funds acquired through issuance of debt when debt service costs are also included in the rate base. In addition, the policy would no longer specify a particular interest rate as reasonable. This approach is consistent with our decision to provide greater flexibility in establishing nonairfield fees. As promulgated, the interim policy could be read as limiting the assessment of an imputed interest charge on nonairfield assets such as terminals and hangars. With the additional flexibility proposed in this supplemental notice for nonairfield fees, it is possible that fees could include an element of imputed interest that would be inconsistent with the interim policy's limitation on imputed interest. By narrowing the scope of the provision on imputed interest (Proposed Para. 2.4.1) to funds generated by the airfield, the Department would avoid a potential internal conflict in the policy. In addition, the new approach would reduce the potential disincentives to investing funds in aeronautical, rather than nonaeronautical assets.

Under the revised proposal, the airport proprietor could not charge imputed interest on funds generated from fees charged for the use of the airfield. The policy and legal considerations for this limitation are discussed below, in connection with the issue of allowing a return on investment.

With respect to commenters' concerns over the ability to trace the source of funds, we note that in the recent decision on LAX landing fees, the Department stated that, under the Administrative Procedure Act, a carrier complaining about inclusion of imputed interest in the rate base would bear the burden of proving that the airport proprietor was claiming imputed interest on aeronautical surpluses. Under this ruling, an airport proprietor need not trace the source of internally generated funds to claim imputed interest. However, if the airport proprietor has data available that would enable a complainant to trace the funds, that data should be disclosed during fee

negotiations or in connection with a fee dispute resolution proceeding.

4. Return on Investment.

The interim policy does not provide for the inclusion of a separate return on investment in the aeronautical rate base.

Airport commenters generally objected to this omission. They argued that a return on investment represents the cost of providing capital for the airport and retaining that investment in use as an airport. They further argued that the failure to allow a rate of return would amount to an unconstitutional taking of property. In addition, they argued that by not allowing a rate of return in the aeronautical rate base, the policy provides incentives for airports to invest internally generated funds in nonaeronautical assets. They also argued that a rate of return is necessary to assure that airport proprietors have adequate revenue to meet debt service coverage obligations and maintain adequate cash reserves to protect against contingencies and unexpected declines in activity and revenue.

Airport users do not object to the approach of the interim policy statement on this issue.

The proposed revisions would permit airport proprietors to use any reasonable, not unjustly discriminatory method to establish nonairfield fees. Fees established by negotiation, for example, may well include a reasonable profit margin for the airport proprietor.

With respect to a publicly-owned airfield, no separate rate of return would be allowed, although imputed interest might be included in the rate base in some circumstances. This treatment of the airfield is justified by the nature of the airfield asset and by the Federal government's historic role and interest in airport development.

A publicly-owned airfield is a public asset operated for the benefit of the general public. Moreover, since the enactment of the first Federal airport aid program in 1946, the overwhelming preponderance of Federal assistance has been applied to finance airfield development. The purpose of this assistance has been to promote and assure the growth, safety and efficiency of the national air transportation system, not to assist airport sponsors in developing profit-making facilities. In this regard, we note that the AAIA specifically prohibits an airport proprietor from including the Federal share of projects in the airport's rate base. The Department considers this prohibition to reflect a Congressional intent to limit the public airport proprietor's ability to employ facilities financed in part with Federal assistance as a means to generate a profit. Finally, with the exception of Los Angeles, whose landing fees were found to be unreasonable in part, we are not aware of any public airport operator that has sought to include a rate of return in its airfield rate base.

In contrast, nonairfield assets such as hangars and terminal gates, are usually leased on an exclusive-use basis. The lease rates reflect the value to the tenant of having an exclusive right to use the particular facility leased. In addition, hangars are ineligible for Federal funding. Eligible terminal development is limited to public use, nonrevenue producing areas—not those which would typically be the subject of an exclusive, or even preferential use lease. In addition, terminal development has constituted a relatively small share of overall Federal airport assistance over the years. Thus, for nonairfield aeronautical facilities, the possibility of earning a profit from Federally financed assets is a *de minimis* concern.

Finally, under the proposed policy, a public airport proprietor may recover its full costs, including the cost of its actual investment in the airfield. In addition, the policy allows the airport proprietor to add the cost of meeting debt-service coverage requirements and reasonable reserves to the rate base. Therefore, a separate rate of return allowance is not needed to meet these requirements for publicly owned airports. A private owner could earn a reasonable return on investment.

5. Applicability to General Aviation Airports

Airport commenters generally objected to the application of the policy to general aviation airports. They argued that § 47129 precludes the Department from adopting airport fee policies applicable to general aviation airports, since that section directs the Secretary to establish policies to be applied in disputes between air carriers and airports. They also argued that the total HCA cap would pose a hardship for most general aviation airports, where nonaeronautical revenues are insignificant and cannot be relied on to generate surplus funds to finance replacement and improvement of airport assets.

Airport users did not specifically address this issue.

The Department does not propose to exclude general aviation airports from the scope of the policy. However, we propose to modify the policy statement to clarify that in situations not covered by § 47129, the policy would be applied by the FAA in its role as administrator of the AIP program, under which the agency must satisfy itself that an applicant for grants is in compliance with its assurances, but does not provide a forum for adjudicating disputes between private parties.

While § 47129 mandates the promulgation of standards relating to airport fees charged to air carriers, it does not prohibit the development of airport fee policies for other airports. Section 511 of the AAIAct, 49 U.S.C. 47107(a) requires the Department to receive satisfactory assurances that, *inter alia*, each airport receiving a grant will be available for public use on reasonable terms without unjust discrimination. This provision is not limited to air carrier airports. Moreover, § 519(a) of the AAIAct, 49 U.S.C. 47122 authorizes the Department to take action we ''consider necessary to carry out'' the AAIA. Under these provisions, the Department has authority to issue a policy on reasonable and nondiscriminatory airport fees applicable to general aviation airports.

The Department is aware of the differences between general aviation airports and airports receiving extensive air carrier services. As we noted in publishing the interim policy, we will take these differences into account in applying the policy. Moreover, the potential adverse impact on general aviation airports of the revenue cap would be eliminated by our proposal to eliminate that cap.

6. Applicability Where an Agreement Exists

Airport commenters generally requested that we modify the policy to exclude fees established by agreements with users. They argued that the limitations in § 47129 (e)(1) and (f)(1) preclude the application of the policy to fees established by agreement. They also argued that fees established by agreement generally represent a mutual exchange of benefits to both parties. A determination of unreasonableness by the Department would disturb this exchange and provide a windfall to the airport user who challenged the fee.

The Department does not intend to fully exclude fees set by agreement from the scope of the policy. However, we propose to modify the policy statement to clarify that if the FAA reviews a fee set by agreement, the FAA will not act as a forum for adjudication of contract disputes between private parties.

As noted above, the AAIA provides authority for establishing a policy that applies to all airport fees imposed on aeronautical users, including fees established by agreement. In addition, many bilateral aviation agreements include a commitment by the United

States that airport fees charged to foreign airlines will be reasonable. An airport and individual aeronautical user or users cannot by private agreement waive the obligations of the AIP grant assurances, which are designed to protect the public, not just private interests. Similarly, they cannot waive the United States' obligations to foreign governments. Moreover, it is possible that an agreement that is reasonable, and even beneficial in its impact on the parties could have an unreasonable or unjustly discriminatory impact on nonparty airport users.

7. Applicability to Users Other Than U.S. Air Carriers

Airport commenters generally request us to limit the applicability of the policy to U.S. air carriers and foreign air carriers. A few commenters also request that we exclude fees charged to foreign air carriers from the scope of the policy and from the applicability of the expedited hearing procedures in 14 CFR Part 302, subpart F. They argue that § 47129 by its terms precludes us from adopting policies and procedures to determine the reasonableness of fees other than those fees charged to air carriers that are not otherwise excluded from § 47129 by its terms. They further argue that the methods used to establish fees to non-carrier aeronautical users do not readily lend themselves to application of the policy.

The Department does not propose to limit the applicability of the policy to fees imposed on U.S. and foreign air carriers. However, we propose to modify the policy statement to clarify that in situations not covered by § 47129, the policy would be applied by the FAA in its role of administrator of the AIP program in carrying out the agency's obligation to satisfy itself that an applicant for grants is in compliance with its assurances, not in the role of a forum for adjudicating a dispute between private parties. The Department also intends to apply the procedures mandated by § 47129, including the procedures governing refunds, to foreign air carriers in the same way we apply it to U.S. air carriers.

As noted above, the AAIA provides authority for establishing a policy that applies to all airport fees imposed on aeronautical users, including fees imposed on foreign air carriers and noncarrier aeronautical users. In addition, many bilateral aviation agreements include a commitment by the United States that airport fees charged to foreign airlines will be reasonable.

The Department recently considered the applicability of § 47129 to foreign air carriers in the decision on the reasonableness of LAX landing fees. The Department concluded that § 47129 allows foreign airlines to obtain retrospective relief and to file complaints. The Department pointed out that the United States' obligations to give nondiscriminatory treatment to foreign carriers generally precluded us from denying foreign air carriers a remedy available to U.S. carriers absent a bar to granting foreign air carriers that remedy. Order 95–6–36 at 53–56. For the reasons stated in its consideration of the issue in the LAX case, the Department will continue to consider complaints filed by foreign air carriers under the terms of § 47129.

8. Limits on Aeronautical Surplus

The Department proposes to modify the policy to eliminate the total HCA cap on aeronautical revenue and to provide that nonairfield fees may be established by any reasonable means. In providing this flexibility, the Department is in no respect waiving the requirements in statute, AIP grant assurances and, where applicable, international aviation agreements. The use of negotiated rates or rates based on an objective determination of fair market value creates the opportunity for the generation of surplus aeronautical revenues in any given year. The Department proposes to rely generally on market discipline to prevent the generation of aeronautical revenues that, over time, exceed aeronautical costs. Based on this reliance, we are not proposing an alternative cap on fees imposed for aeronautical services and facilities other than the airfield. However, to address the remote chance that the market mechanism may break down, we propose to add a provision on revenue generation specifying that the accumulation of surpluses attributable to aeronautical revenue may warrant an inquiry into the reasonableness of the aeronautical fees (proposed Para. 4.2.1).

Public Meetings

In order to facilitate the submission of public and industry comment, and to ensure that agency staff has the best opportunity to understand the positions of commenters and the scope of industry practice on this complex subject, the Department will hold at least two informal public meetings on the proposed policy. The meetings will be structured to permit informal discussion among the various interested parties rather than simply delivery of prepared comments for the record. Notice of the time, date, and location of the meetings will be published separately in the **Federal Register**.

Proposed Policy

Accordingly, the OST and the FAA propose to revise the Policy Regarding Airport Rates and Charges as follows:

Policy Regarding the Establishment of Airport Rates and Charges

Introduction

It is the fundamental position of the Department that the issue of rates and charges is best addressed at the local level by agreement between users and airports. By providing guidance on standards applicable to airport fees imposed for aeronautical use of the airport, the Department intends to facilitate direct negotiation between the proprietor and aeronautical users and to minimize the need to seek direct Federal intervention to resolve differences over airport fees.

Applicability of the Policy

A. Scope of Policy

Under the terms of grant agreements administered by the FAA for airport improvement, all aeronautical users are entitled to airport access on fair and reasonable terms without unjust discrimination. Therefore, the Department considers that the principles and guidance set forth in this policy statement apply to all aeronautical uses of the airport. The Department recognizes, however, that airport proprietors may use different mechanisms and methodologies to establish fees for different facilities, *e.g.*, for the airfield and terminal area, and for different aeronautical users, *e.g.*, air carriers and fixed-base operators. Various elements of the policy reflect these differences. In addition, the Department will take these differences into account if we are called upon to resolve a dispute over aeronautical fees or otherwise consider whether an airport sponsor is in compliance with its obligation to provide access on fair and reasonable terms without unjust discrimination.

B. Aeronautical Use and Users

The Department considers the aeronautical use of an airport to be any activity that involves, makes possible, is required for the safety of the operations of, or is otherwise directly related to, the operation of aircraft. Aeronautical use includes services provided by air carriers related directly and substantially to the movement of passengers, baggage, mail and cargo on the airport. Persons, whether individuals or businesses, engaged in

aeronautical uses involving the operation of aircraft, or providing flight support directly related to the operation of aircraft, are considered to be aeronautical users.

Conversely, the Department considers that the operation by air carriers or foreign air carriers of facilities such as a reservations center, headquarters office, or flight kitchen on an airport does not constitute an aeronautical activity subject to the principles and guidance contained in this policy statement with respect to reasonableness and unjust discrimination. Such facilities need not be located on an airport. A carrier—s decision to locate such facilities is based on the negotiation of a lease or sale of property. Accordingly, the Department relies on the normal forces of competition for commercial or industrial property to assure that fees for such property are not excessive.

C. Applicability of Section 113 of the FAA Authorization Act of 1994

Section 113 of the Federal Aviation Authorization Act of 1994 (''Authorization Act''), 49 U.S.C. § 47129, directs the Secretary of Transportation to issue a determination on the reasonableness of certain fees imposed on air carriers in response to carrier complaints or a request for determination by an airport proprietor. Section 47129 further directs the Secretary to publish final regulations, policy statements, or guidelines establishing procedures for deciding cases under § 47129 and the standards to be used by the Secretary in determining whether a fee is reasonable. Section 47129 also provides for the issuance of credits or refunds in the event that the Secretary determines a fee is unreasonable after a complaint is filed. Section 47129(e) excludes from the applicability of § 47129 a fee imposed pursuant to a written agreement with air carriers, a fee imposed pursuant to a financing agreement or covenant entered into before the date of enactment of the statute (August 23, 1994), and an existing fee not in dispute on August 23, 1994. Section 47129(f) further provides that § 47129 shall not adversely affect the rights of any party under existing air carrier/airport agreements or the ability of an airport to meet its obligations under a financing agreement or covenant that is in effect on August 23, 1994.

The Department does not interpret § 47129 to repeal or narrow the scope of the basic requirement that fees imposed on aeronautical users be reasonable and not unjustly discriminatory or to narrow the obligation on the Secretary to receive satisfactory assurances that, *inter alia*, airport sponsors will provide access on reasonable terms before approving AIP grants. Moreover, the Department does not interpret sections 47129 (e) and (f) to preclude the Department from adopting policy guidance to carry out the Department's statutory obligation to assure that aeronautical fees are being imposed at AIP-funded airports in a manner that is consistent with the obligation to provide airport access on reasonable terms. Likewise, in the case of airports receiving international service, these provisions do not preclude us from carrying out any international obligations for assuring that airport fees charged to foreign airlines are reasonable.

Therefore, the Department will apply the policy guidance in all cases in which we are called upon to determine if an airport sponsor is carrying out its obligation to make the airport available on reasonable terms, including instances covered in § 47129 (e) and (f).

However, as the statute provides, a dispute over matters described by § 47129 (e) and (f) will not be processed under the procedures mandated by § 47129. Rather those disputes will be processed under procedures applicable to airport compliance matters in general. In addition, the Department will take into account the existence of an agreement between air carrier and airport operator, if one exists, in making a determination.

D. Components of Airfield

The Department considers the airfield assets to consist of runways, taxiways, ramps or aprons not leased on an exclusive use basis and land associated with these facilities. The Department also considers the airfield to include land acquired for the purpose of assuring land-use compatibility with the airfield, if the land is included in the rate base associated with the airfield under the provisions of this policy.

Principles Applicable to Airport Rates and Charges

1. In general, the Department relies upon airport proprietors, aeronautical users, and the market and institutional arrangements within which they operate, to ensure compliance with applicable legal requirements. Direct Federal intervention will be available, however, where needed.

2. Rates, fees, rentals, landing fees, and other service charges (''fees'') imposed on aeronautical users for aeronautical use of airport facilities (''aeronautical fees'') must be fair and reasonable.

3. Aeronautical fees may not unjustly discriminate against aeronautical users or user groups.

4. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible.

5. In accordance with relevant Federal statutory provisions governing the use of airport revenue, airport proprietors may expend revenue generated by the airport only for statutorily allowable purposes.

Local Negotiation and Resolution

1. In general, the Department relies upon airport proprietors, aeronautical users, and the market and institutional arrangements within which they operate, to ensure compliance with applicable legal requirements. Direct Federal intervention will be available, however, where needed.

1.1 The Department encourages direct resolution of differences at the local level between aeronautical users and the airport proprietor. Such resolution is best achieved through adequate and timely consultation between the airport proprietor and the aeronautical users. Airport proprietors should engage in adequate and timely consultation with aeronautical users about airport fees.

1.1.1 Airport proprietors should consult with aeronautical users well in advance, if practical, of introducing significant changes in charging systems and procedures or in the level of charges. The proprietor should provide adequate information to permit aeronautical users to evaluate the airport proprietor's justification for the change and to assess the reasonableness of the proposal. For consultations to be effective, airport proprietors should give due regard to the views of aeronautical users and to the effect upon them of changes in fees. Likewise, aeronautical users should give due regard to the views of the airport proprietor and the financial needs of the airport.

1.1.2 To further the goal of effective consultation, Appendix 1 of this policy statement contains a description of information that the Department considers would be useful to the carriers and other aeronautical users to permit meaningful consultation and evaluation of a proposal to modify fees.

1.1.3 Airport proprietors should consider the public interest in establishing airport fees, and aeronautical users should consider the public interest in consulting with airports on setting such fees.

1.1.4 Airport proprietors and aeronautical users should consult and make a good-faith effort to reach agreement. Absent agreement, airport proprietors are free to act in accordance with their proposals, subject to review by the Secretary or the Administrator on complaint by the user or, in the case of fees subject to 49 U.S.C. 47129, upon request by the airport operator, or, in unusual circumstances, on the Department's initiative.

1.1.5 To facilitate local resolution and reduce the need for direct Federal intervention to resolve differences over aeronautical fees, the Department encourages airport proprietors and aeronautical users to include alternative dispute resolution procedures in their lease and use agreements.

1.1.6 Any newly established fee or fee increase that is the subject of a complaint under 49 U.S.C. 47129 that is not dismissed by the Secretary must be paid to the airport proprietor under protest by the complainant. Unless the airport proprietor and complainant agree otherwise, the airport proprietor will obtain a letter of credit, or surety bond, or other suitable credit instrument in accordance with the provisions of 49 U.S.C. 47129(d). Pending issuance of a final order determining reasonableness, an airport proprietor may not deny a complainant currently providing air service at the airport reasonable access to airport facilities or services, or otherwise interfere with that complainant's prices, routes, or services, as a means of enforcing the fee, if the complainant has complied with the requirements for payment under protest.

1.2 Where airport proprietors and aeronautical users have been unable, despite all reasonable efforts, to resolve disputes between them, the Department will act to resolve the issues raised in the dispute.

1.2.1 In the case of a fee imposed on one or more air carriers or foreign air carriers, the Department will issue a determination on the reasonableness of the fee upon the filing of a written request for a determination by the airport proprietor or, if the Department determines that a significant dispute exists, upon the filing of a complaint by one or more air carriers or foreign air carriers, in accordance with 49 U.S.C. § 47129 and implementing regulations. Pursuant to the provisions of 49 U.S.C. § 47129, the Department may only determine whether a fee is reasonable or unreasonable, and may not set the level of the fee.

1.2.2 The Department will first offer its good offices to help parties reach a mutually satisfactory outcome in a timely manner. Prompt resolution of these disputes is always desirable since extensive delay can lead to uncertainty for the public and a hardening of the parties' positions. Air carriers and foreign air carriers may request the assistance of the Department in advance of or in lieu of the formal complaint procedure described in 1.2.1.; however, the 60-day period for filing a complaint under § 47129 shall not be extended or tolled by such a request.

1.2.3 In the case of fees imposed on other aeronautical users, where negotiations between the parties are unsuccessful and a complaint is filed alleging that airport fees violate an airport proprietor's federal grant obligations, the Department will, where warranted, exercise the agency's broad statutory authority to review the legality of those fees and to issue such determinations and take such actions as are appropriate based on that review.

1.3 Airport proprietors must retain the ability to respond to local conditions with flexibility and innovation. An airport proprietor is encouraged to achieve consensus and agreement with its airline tenants before implementing a practice that would represent a major departure from this guidance. However, the requirements of any law, including the requirements for the use of airport revenue, may not be waived, even by agreement with the aeronautical users.

Fair and Reasonable Fees

2. Rates, fees, rentals, landing fees, and other service charges (''fees'') imposed on aeronautical users for the aeronautical use of the airport (''aeronautical fees'') must be fair and reasonable.

2.1 Federal law does not require a single approach to airport financing. Rates may be set according to a ''residual'' or ''compensatory'' rate-setting methodology, or any combination of the two, or according to a new rate-setting methodology, as long as the methodology used is applied consistently to similarly situated aeronautical users and as otherwise required by this policy. Airport proprietors may set rates for aeronautical use of airport facilities by ordinance, statute or resolution, regulation, or agreement.

2.1.1 Aeronautical users may receive a cross-credit of nonaeronautical revenues only if the airport proprietor agrees. Agreements providing for such cross-crediting are commonly referred to as ''residual agreements'' and generally provide a sharing of nonaeronautical revenues with aeronautical users. The aeronautical users may in turn agree to assume part or all of the liability for non-aeronautical costs, or an airport proprietor may cross-credit nonaeronautical revenues to aeronautical users even in the absence of such an agreement, but an airport proprietor may not require aeronautical users to cover losses generated by nonaeronautical facilities except by agreement.

2.1.2 In other situations, an airport proprietor assumes all liability for airport costs and retains all airport profits for its own use in accordance with Federal requirements. This approach to airport financing is generally referred to as the compensatory approach.

2.1.3 Airports frequently adopt charging systems that employ elements of both approaches.

2.2 Revenues from fees imposed for use of the airfield (airfield revenues) may not exceed the costs to the airport proprietor of providing airfield services and airfield assets currently in aeronautical use (airfield costs) unless otherwise agreed to by the affected aeronautical users.

2.3 The ''rate base'' is the total of all aeronautical costs that may be recovered from aeronautical users through fees charged for providing aeronautical services and facilities (aeronautical fees). Airport proprietors must employ a reasonable, consistent, and ''transparent'' (i.e., clear and fully justified) method of establishing the rate base and adjusting the rate base on a timely and predictable schedule.

2.4 Except as provided in paragraph 2.6 below or by agreement with aeronautical users, costs that may be included in the rate base (allowable costs) are limited to all operating and maintenance expenses directly and indirectly associated with the provision of aeronautical facilities and services (including environmental costs, as set forth below); all capital costs associated with the provision of aeronautical facilities and services currently in use, as set forth below; and current costs of planning future aeronautical facilities and services. In addition, a private, equity owner of an airport can include a reasonable return on investment.

2.4.1 The airport proprietor may include in the aeronautical rate base, at a reasonable rate, imputed interest on funds used to finance capital investments for aeronautical use, except to the extent that the funds are generated by fees charged for the use of airfield assets and airfield services. However, the airport proprietor may not include in the rate base imputed interest on funds obtained by debt financing if the debt-service costs of those funds are also included in the rate base.

2.4.2 Airport proprietors may include reasonable environmental costs in the rate base to the extent that the airport proprietor incurs a corresponding actual expense. All revenues received based on the inclusion of these costs in the rate base are subject to Federal requirements on the use of airport revenue. Reasonable environmental costs include, but are not necessarily limited to, the following:

(a) the costs of investigating and remediating environmental contamination caused by aeronautical operations at the airport at least to the extent that such investigation or remediation is required by or consistent with local, state or federal environmental law, and to the extent such requirements are applied to other similarly situated enterprises;

(b) the cost of mitigating the environmental impact of an airport development project (if the development project is one for which costs may be included in the aeronautical users' rate base), at least to the extent that these costs are incurred in order to secure necessary approvals for such projects, including but not limited to approvals under the National Environmental Policy Act and similar state statutes;

(c) the costs of aircraft noise abatement and mitigation measures, both on and off the airport, including but not limited to land acquisition and acoustical insulation expenses, to the extent that such measures are undertaken as part of a comprehensive and publicly-disclosed airport noise compatibility program; and

(d) the costs of insuring against future liability for environmental contamination caused by current aeronautical activities. Under this provision, the costs of self-insurance may be included in the rate base only to the extent that they are incurred pursuant to a self-insurance program that conforms to applicable standards for self-insurance practices.

2.4.3 Airport proprietors are encouraged to establish fees with due regard for economy and efficiency.

2.4.4 The airport proprietor may include in the rate base amounts needed to fund debt service and other reserves and to meet cash flow requirements as specified in financing agreements or covenants (for facilities in use), including but not limited to debt-service coverage; to fund cash reserves to protect against the risks of cash-flow fluctuations associated with normal airport operations; and to fund reasonable cash reserves to protect against other contingencies.

2.4.5 The airport proprietor may include in the rate base capital costs in accordance with the following guidance, which is based on the principle of cost causation:

(a) Costs of facilities directly used by the aeronautical users may be fully included in the rate base, in a manner consistent with this policy. For example, the capital cost of a runway may be included in the rate base used to establish landing fees.

(b) Costs of airport facilities used for both aeronautical and nonaeronautical uses (shared costs) may be included in a particular aeronautical rate base if the facility in question supports the aeronautical activity reflected in that rate base. The portion of shared costs allocated to aeronautical users should not exceed an amount that reflects the aeronautical purpose and proportionate aeronautical use of the facility in relation to nonaeronautical use of the facility, unless the affected aeronautical users agree to a different allocation. Aeronautical users may not be allocated all costs of facilities that are used by both aeronautical and nonaeronautical users unless they agree to that allocation.

2.5 Airport proprietors must comply with the following practices in establishing the rate base, provided, however, that one or more aeronautical users may agree to a rate base that deviates from these practices in the establishment of those users' fees.

2.5.1 In determining the total costs that may be recovered from fees for the use of airfield assets, public use roadways, and associated land in the rate base, the airport proprietor must value them according to their historic cost to the original airport proprietor. Subsequent airport proprietors generally shall acquire the cost basis of such assets at the original airport proprietor's historic cost, adjusted for subsequent improvements.

(a) Where the land associated with airfield facilities and public use roadways was acquired with debt-financing, the airport proprietor may include such land in the rate base by charging all debt service expenditures incurred by the airport proprietor, including principal, interest and debt service coverage. If such land was acquired with internally generated funds or donated by the airport proprietor the airport proprietor may include the cost of the land by amortization. Upon retirement of the debt or completion of the amortization, the land may no longer be included in the rate base.

(b) The airport proprietor may use a reasonable and not unjustly discriminatory methodology to allocate the total airfield costs among individual segments of the airfield to enhance the efficient use of the airfield, even if that methodology results in fees charged for a particular segment that exceed that segment's pro rata share of costs based on HCA valuation.

2.5.2 Where comparable assets, e.g., two runways or two terminals, were built at different times and have different costs, the airport proprietor may, at its option, combine the cost basis of the comparable assets to develop a single cost basis applicable to all such facilities.

2.5.3 The costs of facilities not yet built and operating may not be included in the rate base. However, the debt-service and other carrying costs incurred by the airport proprietor during construction may be capitalized and amortized once the facility is put in service. The airport proprietor may include in the rate base the cost of land that facilitates the current operations of the airport.

2.5.4 The rate base of an airport may include costs associated with another airport currently in use only if: (1) The proprietor of the first airport is also the proprietor of the second airport; (2) the second airport is currently in use; and (3) the costs of the second airport to be included in the first airport's rate base are reasonably related to the aviation benefits that the second airport provides or is expected to provide to the aeronautical users of the first airport.

(a) Element no. 3 above will be presumed to be satisfied if the second airport is designated as a reliever airport for the first airport in the FAA's National Plan of Integrated Airport Systems (NPIAS).

(b) If an airport proprietor closes an operating airport as part of an approved plan for the construction and opening of a new airport, reasonable costs of disposition of the closed airport facility may be included in the rate base of the new airport, to the extent that such costs exceed the proceeds from the disposition.

2.6 For other facilities and land not covered by Paragraph 2.5.1, the airport proprietor may use any reasonable methodology to determine fees, so long as the methodology is justified and applied on a consistent basis to comparable facilities, subject to the provisions of paragraph 4.2.1 below.

2.6.1 Reasonable methodologies may include, but are not limited to, historic cost valuation, direct negotiation with prospective aeronautical users, or objective determinations of fair market value.

2.7 At all times, airport proprietors must comply with the following practices:

2.7.1 Indirect costs may not be included in the rate base unless they are based on a reasonable, transparent cost allocation formula calculated consistently for other units or cost centers within the control of the proprietor.

2.7.2 The costs of airport development or planning projects paid for with federal government grants and contributions and passenger facility charges (PFCs) may not be included in the rate base.

(a) In the case of a PFC-funded project for terminal development, for gates and related areas, or for a facility that is occupied by one or more carriers on an exclusive or preferential use basis, the fees paid to use those facilities shall be no less than the fees charged for similar facilities that were not financed with PFC revenue.

Prohibition on Unjust Discrimination

3. Aeronautical fees may not unjustly discriminate against aeronautical users or user groups.

3.1 Unless aeronautical users agree, aeronautical fees imposed on any aeronautical user or group of aeronautical users may not exceed the costs allocated to that user or user group under a cost allocation methodology adopted by the airport proprietor that is consistent with this guidance.

3.1.1 The prohibition on unjust discrimination does not prevent an airport proprietor from making reasonable distinctions among aeronautical users (such as signatory and non-signatory carriers) and assessing higher fees on certain categories of aeronautical users based on those distinctions (such as higher fees for non-signatory carriers, as compared to signatory carriers).

3.2 A properly structured peak pricing system that allocates limited resources using price during periods of congestion will not be considered to be unjustly discriminatory. An airport proprietor may, consistent with the policies expressed in this policy statement, establish fees that enhance the efficient utilization of the airport.

3.3 Relevant provisions of the Convention on International Civil Aviation (Chicago Convention) and many bilateral aviation agreements specify, inter alia, that charges imposed on foreign airlines must not be unjustly discriminatory, must not be higher than those imposed on domestic airlines engaged in similar international air services and must be equitably apportioned among categories of users. Charges to foreign air carriers for aeronautical use that are inconsistent with these principles will be considered unjustly discriminatory or unfair and unreasonable.

3.4 Allowable costs—costs properly included in the rate base—must be allocated to aeronautical users by a transparent, reasonable, and not unjustly discriminatory rate-setting methodology. The methodology must be applied consistently and cost differences must be determined quantitatively, when practical.

3.4.1 Common costs (costs not directly attributable to a specific user group or cost center) must be allocated according to a reasonable, transparent and not unjustly discriminatory cost allocation formula that is applied consistently, and does not require any air carrier, foreign air carrier or other aeronautical user group to pay costs properly allocable to other users.

Requirement to be Financially Self-Sustaining

4. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible.

4.1 If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the airport proprietor should establish long-term goals and targets to make the airport as financially self-sustaining as possible.

4.1.1 Airport proprietors are encouraged, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, to undertake reasonable efforts to make their particular airports as self sustaining as possible in the circumstances existing at such airports.

(a) Absent agreement with aeronautical users, the obligation to make the airport as self-sustaining as possible does not permit the airport proprietor to establish fees for the use of the airfield that exceed the airport proprietor's airfield costs.

(b) For those facilities for which this policy permits the use of fair market value, the Department does not construe the obligation on self-sustainability to compel the use of fair market value to establish fees.

4.1.2 At some airports, market conditions may not permit an airport proprietor to establish fees that are sufficiently high to recover aeronautical costs and sufficiently low to allow commercial aeronautical services to operate at a profit. In such circumstances, an airport proprietor's decision to charge rates that are below those needed to achieve self-sustainability in order to assure that services are provided to the public is not inherently inconsistent with the obligation to make the airport as self-sustaining as possible in the circumstances.

4.2 In establishing new fees, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenues may be spent under 49 U.S.C. 47107(b)(1), including reasonable reserves and other funds to facilitate financing and to cover contingencies. While fees charged to nonaeronautical users may exceed the costs of service to those users, the surplus funds accumulated from those fees must be used in accordance with § 47107(b).

4.2.1 The Department assumes that the limitation on the use of airport revenue and effective market discipline for aeronautical services and facilities other than the airfield will be effective in holding aeronautical revenues, over time, to the airport proprietor's costs of providing aeronautical services and facilities, including reasonable capital costs. However, the progressive accumulation of substantial amounts of surplus aeronautical revenue may warrant an FAA inquiry into whether aeronautical fees are consistent with the airport proprietor's obligations to make the airport available on fair and reasonable terms.

Requirements Governing Revenue Application and Use

5. In accordance with relevant Federal statutory provisions governing the use of airport revenue, airport proprietors may expend revenue generated by the airport only for statutorily allowable purposes.

5.1 Additional information on the statutorily allowed uses of airport revenue is contained in separate guidance published by the FAA pursuant to § 112 of the FAA Authorization Act of 1994, which is codified at 49 U.S.C. § 47107(l).

5.2. The progressive accumulation of substantial amounts of airport revenues may warrant an FAA inquiry into the airport proprietor's application of revenues to the local airport system.

Issued in Washington, DC, on August 21, 1995.

Federico Peña,

Secretary of Transportation.

David R. Hinson,

Administrator, Federal Aviation Administration.

Appendix 1—Information for Aeronautical User Charges Consultations

The Department of Transportation ordinarily expects the following information to be available to aeronautical users in connection with consultations over changes in airport rates and charges:

1. HISTORIC FINANCIAL INFORMATION covering two fiscal years prior to the current year including, at minimum, a profit and loss statement, balance sheet and cash flow statement for the airport implementing the charges.

2. JUSTIFICATION. Economic, financial and/or legal justification for changes in the charging methodology or in the level of aeronautical rates and charges at the airport. Airports should provide information on the aeronautical costs they are including in the rate base.

3. TRAFFIC INFORMATION. Annual numbers of terminal passengers and aircraft movements for each of the two preceding years.

4. PLANNING AND FORECASTING INFORMATION

(a) To the extent applicable to current or proposed fees, the long-term airport strategy setting out long-term financial and traffic forecasts, major capital projects and capital expenditure, and particular areas requiring strategic action. This material should include any material provided for public or government reviews of major airport developments, including analyses of demand and capacity and expenditure estimates.

(b) Accurate, complete information specific to the airport for the current and the forecast year, including the current and proposed budgets, forecasts of airport charges revenue, the projected number of landings and passengers, expected operating and capital expenditures, debt service payments, contributions to restricted funds, or other required accounts or reserves.

(c) To the extent the airport uses a residual or hybrid charging methodology, a description of key factors expected to affect commercial or other nonaeronautical revenues and operating costs in the current and following years.

[FR Doc. 95–22354 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–13–P

federal register

Friday
September 8, 1995

Part VII

Department of Labor

Occupational Safety and Health Administration

29 CFR 1910

Logging Operations; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–048]

Logging Operations

ACTION: Final rule; corrections and technical amendments.

SUMMARY: This notice corrects and amends the final rule on Logging Operations which was published by OSHA on October 12, 1994 (59 FR 51672). In response to questions raised about certain provisions in the rule, OSHA is clarifying language in the regulatory text so it most accurately expresses the Agency's intent with respect to the provisions in question and to provide additional information with regard to some of the provisions.

EFFECTIVE DATE: September 8, 1995.

FOR ADDITIONAL INFORMATION: Ms. Anne Cyr, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3637, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202)–219–8148.

SUPPLEMENTARY INFORMATION:

Background

On October 12, 1994, OSHA published a revised standard providing protection for workers performing logging operations (59 FR 51672). The final rule (29 C.F.R. 1910.266) had an effective date of February 9, 1995.

After the final rule was published, the Equipment Manufacturers Institute (EMI), the Portable Power Equipment Manufacturers Association (PPEMA), and Homelite, a manufacturer of chain saws, filed timely petitions with the court seeking judicial review of the standard. The deadline for filing a petition for judicial review was December 12, 1994. After the deadline had passed, the Associated California Loggers, the Associated Oregon Loggers, Inc., the Montana Logging Association, and the Washington Contract Loggers Association also filed objections to the final rule.

These parties and organizations raised questions about certain provisions of the final rule. After consideration of their questions, OSHA published a **Federal Register** notice (60 FR 6447, February 8, 1995) staying enforcement of 12 provisions of the standard for six-months, until August 9, 1995. The other provisions of the final rule were not affected by the partial stay and became effective on February 9, 1995.

In the February 8 notice, OSHA explained that the partial stay would give the Agency time to clarify language in the regulatory text and preamble so it most accurately expressed the Agency's intent with respect to the provisions in question and to provide additional information with regard to some of the provisions. The provisions OSHA stayed were: (d)(1)(v)—insofar as it requires foot protection to protect the employee against chain-saw penetration; (d)(1)(vii)—insofar as it requires face protection; (d)(2)(iii)—annual review and approval of first-aid kits by a health care provider; (f)(2)(iv)—machine operation on slopes; (f)(2)(xi)—machine shutdown procedures; (f)(3)(ii)—ROPS specifications; (f)(3)(vii) and (viii)—machine cab enclosures; (f)(7)(ii)—machine parking brakes; (g) (1) and (2)—maintenance and inspection of employee-owned vehicles; (h)(2)(vii)—location of the backcut in Humboldt cutting.

PPEMA and Homelite also requested OSHA to stay enforcement of the requirement that chain saws be equipped with chain brakes. OSHA denied their request. Thereafter, PPEMA withdrew its petition for judicial review. Homelite filed a motion for a stay pending review of the chain-brake requirement with the U.S. Court of Appeals for the Fourth Circuit. OSHA opposed Homelite's motion and American Pulpwood Association (APA) filed an amicus opposing the stay. OSHA also filed a motion to dismiss Homelite's petition for lack of standing. The court denied both Homelite's and OSHA's motions. Homelite continues to challenge the chain brake provision of the final rule in the Fourth Circuit. EMI withdrew its petition for review pursuant to a settlement.

During the six-month stay of enforcement, OSHA received other inquiries about the final rule. In addition, OSHA met with representatives of various logging associations such as APA and the Western Logging Council (WLC), equipment manufacturers such as EMI and PPEMA, and other individuals in order to discuss the stayed provisions as well as other questions they had regarding the final rule.

On August 9, 1995, OSHA published a **Federal Register** notice extending the partial stay for 30 days, until September 8, 1995, in order to complete its reconsideration of the issues, to complete corrections and clarifications in the regulatory text and preamble, and to revise its compliance directive to reflect those changes (60 FR 40457). This notice corrects and amends the final rule, and provides information and clarification regarding the stayed provisions and other issues.

Stayed Provisions

Paragraph (d)(1)(v)—Cut-Resistant Foot Protection

The final rule requires that the employer assure that each employee wears foot protection, covering and supporting the foot and ankle, which is waterproof or water repellant. OSHA stayed one aspect of the foot protection provision which required that logging boots provide protection from penetration by chain saws. Some parties requested OSHA to drop the chain-saw penetration requirement, contending that rubber and calk-soled logging boots providing employees protection from penetration by chain saws were neither necessary nor available.

The rulemaking record strongly supports the need for logging footwear which protects chain-saw operators against penetration by chain saws. As OSHA discussed in the preamble to the final rule, 10 percent of injuries reported in the WIR survey were to the foot and ankle (Ex. 2–1). In addition, APA submitted to the record an injury report where a chain-saw operator who was not wearing protective footwear cut off his foot when the bar went through the soft spot of a tree trunk and into his foot (Ex. 26A).

Reports of foot injuries resulting from chain saws led several commenters to recommend that OSHA require foot protection be cut-resistant (Tr. W1 148, 195; Tr. W2 139). For example, Mr. Joseph William, owner of Jayfor Logging, said he provides and requires employees to wear cut-resistant logging boots (Tr. W1 195). In addition, Mr. Williams said all employers that are members of the Nortim program, a logging workers' compensation insurance group, must assure that employees wear cut-resistant foot protection (Tr. W1 158, 195).

Based on its reconsideration of the record, OSHA maintains that an employee operating a chain saw needs to wear logging boots which will provide protection against penetration by the saw. However, based on discussions during the stay, OSHA is correcting the language of this requirement to express more clearly the Agency's intent regarding the type of chain-saw protection that is required for the foot. In the final rule, OSHA intended by the language ''protect the employee from penetration by chain saws'' to mean that foot protection worn by employees be equipped with material that is *cut-resistant* to chain saws. That

is, OSHA intended that foot protection prevent the chain saw from cutting the employee before the employee is able to react, or before the protective material jams the chain saw. The language in the final rule was not intended to require that the protective material itself must be totally impervious to penetration by a chain saw. Rather, the available protective clothing and footwear is equipped with multiple layers of protective material, such as but not limited to ballistic nylon, Kevlar, or the layered-material in heavy-duty logging boots; which provide cut resistance as follows: the protective material must either provide enough resistance to the saw chain to give the operator time to react and pull the saw away from the foot before the saw chain penetrates through all the layers, or jam the flywheel and chain, thereby stopping the saw. OSHA is revising the regulatory text to indicate that leg protection must be made of material that is cut-resistant, as OSHA has defined it above. OSHA stresses that this change is merely adoption of terminology which is used in the industry, but the use of this term does not change the meaning or intention of the final rule.[1]

Some parties also said that rubber and calk-soled boots which are needed in working in the steep terrain of the northwest were not manufactured with chain-saw cut-resistant material. However, the rulemaking record shows that such boots are available and have been available for a considerable period of time (Ex. 4–103, 5–30). Specifically, E. I. du Pont de Nemours & Company, the manufacturer of Kevlar, told OSHA in 1989 that rubber logging boots were available that contain Kevlar, and which du Pont ''feel[s] offers adequate protection against chain saw injuries, based on European test standards'' (Ex. 5–30). In addition, an article from the June 1987 *The Logger and Lumberman* said that a cut-resistant rubber boot, which had been successfully tested by the U.S. Forest Service, was available (Ex. 4–103). Moreover, in discussions with other manufacturers and distributors of personal protective equipment during the six-month stay, OSHA has confirmed its original conclusion that a variety of companies currently manufacture logging boots, including rubber and calk-soled boots, which are equipped with material to protect against chain saw cuts. Therefore, OSHA is lifting the stay of this requirement. Effective September 8, 1995, employers shall assure that foot protection worn by each employee who operates a chain saw, including rubber, calk-soled and other slip-resistant boots, is chain-saw cut-resistant.

OSHA has also clarified the final rule to indicate that the cut-resistant foot protection requirement applies only to employees who operate a chain saw. OSHA notes and is specifying in the revised compliance directive that this applies to *any operation* of a chain saw, whether as a regular part of the employee's job or incidental to the job. There is nothing in the records that indicates chain-saw accidents involve only those who operate chain saws on a regular basis. OSHA believes that those who operate chain saws only infrequently may be at particular risk because they may be less familiar with the chain saw and less experienced in managing the hazards associated with its operation. Based upon the hazards to employees when they use a chain saw and the ready availability of the protective equipment to minimize such hazards, OSHA believes that all employees who use a chain saw must be protected against foot injury regardless of the frequency of the chain saw usage. Logging employees who do not operate chain saws at all need not have foot protection that is chain-saw cut-resistant.

OSHA also stresses that the foot protection requirement in the final rule is expressed in performance terms. For example, nothing in the final rule requires that employees wear steel-toed logging boots in order to meet the cut-resistance requirement. Steel-toed boots meeting the ANSI foot protection requirements do provide adequate protection against chain-saw cuts for the *toe*. However, if such boots do not have material to protect the rest of the foot from chain-saw cuts they do not comply with the final rule. The final rule requires that logging boots for chain-saw operators must provide cut-resistant protection for the foot, not just the toe. The record indicates that there is available supplemental cut-resistant foot protection which can be attached to logging boots to provide the needed protection (Ex. 5–14).

After publication of the final rule, OSHA was requested by some parties to clarify the rule to indicate from what type of material logging boots must be constructed. They recommended that OSHA specify that logging boots be made of industrial grade or top grain leather or other material. Instead of specifying the type of material which must be used, OSHA has expressed the requirement in performance terms. For example, OSHA has specified that foot protection cover and provide support to the ankle. The purpose of this requirement is to help reduce the significant number of ankle and foot injuries (sprains and fractures) (Ex. 2–1). OSHA is confident that employers and employees will be able to select logging boots that provide adequate ankle support because various logging associations already recognize that hiking and other light duty boots do not provide sufficient protection.[2]

Paragraph (d)(1)(vii)—Face Protection

In the final rule, OSHA required that employers provide and pay for protection for the eyes and face for any employee where there is a potential for injury due to falling or flying objects. After publication of the final rule, OSHA was requested by some parties to stay the face protection requirement in order to clarify the following concerns.

First, these parties requested OSHA to clarify in what logging operations face protection is required. The rulemaking record shows that some employees do need protection for the face as well as the eyes (e.g., chipper operators) (Ex. 2–1). In the WIR survey 42 face injuries were reported during the three-month survey period which involved other than the eye (Ex. 2–1). OSHA believes that chipper operators, employees cutting limbs, branches or spring poles, and employees moving through dense underbrush are among those for whom the risk of facial lacerations from wood, wood chips, needles or splinters is most likely. OSHA is revising the final rule to indicate that where employees are at risk of facial injury they must wear protection meeting the requirements of subpart I of Part 1910 (29 CFR 1910.133).

For other employees, however, eye protection alone may be adequate to protect them from the hazards present. For example, an employee performing machine maintenance may only require eye protection. For these employees, the most likely hazards are dirt, particles or other substances flying or splashing into the eyes. For example, maintenance employees need eye protection where they are using metal cut-off or grinding

[1] OSHA notes that the most important aspect of the protective material is not that it be made specifically of ballistic nylon, but that it is comparably cut-resistant. OSHA intended its use of the term ''ballistic nylon'' in the final rule to be consistent with the industry's generic use of the term as shorthand for cut-resistant materials in general. Indeed, in the preamble to the final rule, OSHA discussed several types of materials which are currently available to provide protection against chain-saw cuts.

[2] OSHA notes that the final rule does not require the employer to provide logging boots for employees. The cost of providing logging boots may be borne by employees. The employer, however, must assure that logging boots which are worn by an employee are in serviceable condition and meet the requirements of paragraph (d)(1)(vi) of the final rule.

tools. Subpart I requires employers to assess the hazards in the workplace to what personal protective equipment is necessary. OSHA is revising the final rule to emphasize that where the assessment indicates a risk of facial injury exists, face protection must also be provided and worn.

Second, these parties requested that OSHA clarify whether the final rule requires employees to wear both eye and face protection simultaneously. It was OSHA's intention that of face protection would adequate protection for both the eyes and the face. Therefore, OSHA is adding a note to the final rule to clarify that where the employer determines that protection against eye and face injury is necessary and provides the employee with a device that protects both the eyes as well as the face, the final rule does not also require the employee to wear separate eye protection.

Finally, these parties said that face protection should not be required because it may interfere with the logger's vision, thereby creating additional hazards. They said optical characteristics of face shields made of solid transparent material, as required by subpart I, could distort peripheral vision. However, they did not provide evidence to this effect during the rulemaking and they have not identified any data in the rulemaking record that would support this contention. There is nothing in the record that would lead the Agency to believe that potential distortion of peripheral vision by face shields creates a greater hazard than lack of face protection. Of the injuries reported in the WIR survey, obstructed vision was not identified as the cause of any injury (Ex. 2–1).

They also said that the logger's vision could be reduced in wet weather because of wood chips or sawdust sticking to the face shield or the transparent material fogging up. Once again, the record does not indicate that this is a significant problem. In any event, the final rule allows flexibility in selecting face protection for employees working in different conditions. Specifically, with the exception of chipping operations, the final rule expressly permits logger-type mesh screens to be used for face protection. Such screens provide protection from penetration by branches, limbs and saplings, yet do not restrict vision in wet weather or fog up. Information in the record indicates that face protection comprised of mesh screens is readily available in the industry. In fact, many types of safety headgear manufactured for the logging industry are equipped with mesh screen face protection.

OSHA notes, however, that most logger-type mesh face screens do not meet the literal requirements of Subpart I because they do not comply with the referenced ANSI standards, ANSI Z87.1–1989 or ANSI Z87.1–1968. Mesh face screens are not constructed with impervious transparent material and do not necessarily meet the impact resistance requirements of the ANSI standards. For this reason, they may not be used in chipping operations where impact resistance is needed to prevent injury from wood, wood chips, needles, or splinters being propelled from chipping machines at great speed. For chipping operations, therefore, eye and face protection must meet the requirements of subpart I.

However, for other logging operations such as chain-saw operation, OSHA believes that logger-type mesh screens will provide adequate protection. In these operations there is not the same hazard of objects hitting the face screen at a high speed or penetrating through the mesh openings. Mesh screens provide adequate protection to keep small limbs, branches, and saplings from poking the employee's eye or cutting the employee's face when the employee is moving through the woods. Therefore, OSHA is revising the final rule and compliance directive to indicate that an employer who provides and requires chain saw operators performing felling, limbing and bucking activities to use a logger-type mesh face screen would be deemed to be in compliance with this paragraph. Additionally, logger-type mesh face screens may also be used by those employees performing yarding operations. For all other logging tasks (e.g., machine and vehicle maintenance, cutting winch cables, drilling, grinding, and welding during equipment repair) for which the hazard assessment indicates eye and face protection are necessary, the employer must provide protection which meets the requirements of subpart I.

Paragraph (d)(2)(iii)—First-Aid Kits

Paragraph (d)(2) of the final rule requires that employers provide and maintain first-aid kits. In addition, this paragraph specifies the minimum content requirements for first-aid kits (Appendix A). These provisions became effective February 9, 1995.

OSHA stayed the requirement that the number and contents of first-aid kits be reviewed and approved annually by a health care provider. Some parties told OSHA that annual approval of first-aid kits by health care providers would be burdensome for employers. Because the final rule already contains a list of minimum contents for the first-aid kit, OSHA is persuaded that eliminating the requirement of annual health care provider review will not reduce protection for logging employees.

The minimum first-aid kit and first-aid training requirements provided in the final rule were developed in consultation with the OSHA offices of occupational medicine and occupational health nursing. This careful review of the minimum contents of the required first-aid kits makes it unnecessary for OSHA to require employers to have the kits reviewed annually by a health care provider. Therefore, OSHA is correcting the final rule accordingly.

At the same time, however, OSHA encourages logging employers to conduct an annual review of the contents of first-aid kits, including engaging in consultation with a health care provider regarding approval of those contents. Such review can help to ensure that the contents are adequate for the number of employees and conditions of the particular logging worksite, and that first-aid kits contain the latest first-aid innovations and technologies which would be useful to the logging work environment. Because of the remoteness of logging worksites from professional medical services, OSHA believes that for some logging sites, additional attention should be given to the contents of first-aid kits. Annual health care provider review is clearly permitted in these circumstances, and the final rule provides for such review as a ''best practice'' recommendation for employers.[3]

Paragraph (f)(2)(iv)—Machine Operation on Slopes

OSHA stayed the provision requiring that logging machines not be operated on any slope greater than the maximum slope recommended by the manufacturer after learning that logging machine manufacturers do not specify a maximum slope on which particular logging machines can be safely operated. The intent of this requirement was to ensure that machines used on sloping terrain are operated in a manner that will prevent the machine from tipping or rolling over. As OSHA explained in the preamble to the final rule, injuries and fatalities resulting from tipping and rollover accidents are

[3] OSHA notes that the employer does not need to take the actual first-aid kits themselves to the health care provider for review and approval. Rather, the health care provider may review the list of the items contained in the first-aid kits, along with a description of the conditions of the particular worksite.

prevalent in the logging industry because of the rough terrain on which logging machines operate (Ex. 2–1).

The maximum slope of operation varies depending on the conditions under which the machine is being operated. These conditions include the terrain (e.g., wet, muddy, dry, compacted, rocky), the direction of the machine operation (e.g., cross-slope, uphill, downhill, diagonally across the slope), and the operation being performed. OSHA is revising the final rule to require that employers assure that machine operators follow the instructions, directions and limitations described by the manufacturer in the operating and maintenance manuals.

There are many ways in which an employer can accomplish this obligation. Manufacturers' operating instructions can be incorporated into operator training programs. Compliance with these operating instructions can be reinforced during regular safety and health meetings, and through spot checks on employees' operating performance.

Paragraph (f)(2)(xi)—Machine Shutdown Procedures

The final rule specifies procedures which must be followed when a machine is shut down. These include applying brakes and grounding or securing moving elements (paragraph (f)(2)(x)), and discharging pressure and stored energy (paragraph (f)(2)(xi)). With regard to the discharge requirements, this provision is intended to prevent moving elements, such as blades, buckets, saws and shears from being unexpectedly or inadvertently activated or engaged after the machine has been shut down. Such activation has resulted in severe injury or death to logging operators, maintenance personnel or others in the vicinity of the machine (Ex. 2–1, 4–61, 4–63, 4–64, 26A).

OSHA stayed the discharge provision (paragraph (f)(2)(xi)) in order to reconsider whether the provision could be misinterpreted to require unnecessary discharging of pressure and stored energy. For example, OSHA was concerned whether employers might misinterpret the provision as requiring the discharge of pressure and stored energy not related to moving elements of the machine, such as bleeding machine brakes, a result which OSHA had not intended.

OSHA is therefore correcting this provision so it more accurately identifies and addresses the hazards OSHA intended to control in the final rule. Revised paragraph (f)(2)(xi) requires that the hydraulic and pneumatic storage devices which can move the moving elements of a logging machine after machine shut down and expose employees to serious hazards must be discharged as specified by the manufacturer.

OSHA is also correcting paragraph (f)(2)(x) to require that any time the operator leaves the machine cab, the parking brakes must be applied, the moving elements must be grounded or secured, and the transmission must be placed in park. A further review of the record indicates that such a correction is necessary since the hazard of unexpected or inadvertent activation of logging machines is present any time an operator leaves the machine cab, whether to perform another logging operation or to stop work for the day. The record includes several reports of machine operators and others who died or were severely injured when they failed to engage the parking brakes and lower moving elements to the ground before dismounting from the machine (Ex. 4–61, 4–64, 26A).

OSHA has addressed the hazard of inadvertent machine engagement in other rules as well (e.g., 29 CFR 1910.147, 29 CFR 1910.178). OSHA believes the same hazard addressed by those rules is present in logging operations. Therefore, OSHA is correcting the final rule and compliance directive to indicate that braking, grounding and parking procedures must be followed any time the operator leaves the machine cab.

Paragraph (f)(3)(ii)—ROPS Specifications

The final rule requires that logging machines be equipped with rollover protective structures (ROPS) that are tested, installed and maintained in accordance with the Society of Automotive Engineers (SAE) J1040, April 1988, performance criteria for ROPS. OSHA stayed this requirement for six months and is now amending the ROPS requirement to state that only machines manufactured after August 1, 1996 must have ROPS which meet the 1988 SAE standard.

OSHA is making this change because, while many machines currently manufactured do meet the 1988 SAE ROPS standard, other machines currently manufactured or in use do not. These machines do have ROPS for the most part. However, the ROPS on these machines meet the 1979 SAE standard instead. While machines that meet the 1988 standard have additional protection (e.g., protection for longitudinal rollover), machines meeting the 1979 standard do provide protection for the most frequently occurring hazard: horizontal rollover. As such, OSHA believes that permitting an exception for machines already in service should not reduce significantly the level of protection provided to machine operators. Therefore, OSHA is revising the compliance directive to indicate that machines manufactured on or before August 1, 1996, which comply with the 1979 SAE ROPS standard are appropriate for use, provided the ROPS is maintained at its designed level of effectiveness (See paragraph (f)(1)(i)—machine general maintenance requirement).[4]

In addition, EMI has agreed to use its best efforts to provide OSHA with a list of the model numbers of the last logging machines manufactured on August 1, 1996. OSHA will use this list to update its logging compliance directive as to which logging machines must meet the 1988 SAE ROPS standard.

Paragraph (f)(3) (vii) and (viii)—Machine Cab Enclosures

OSHA stayed two provisions in the final rule dealing with cab enclosures.[5] Paragraph (f)(3)(vii) required that the lower portion of machine cabs, up to the top of the instrument panel or 24 inches, be enclosed with solid material, except at entrances. Paragraph (f)(3)(viii) required that the upper portion of cabs be enclosed with mesh material (no greater than 2 inches at its least dimension) or with other material(s) that provide equivalent protection and visibility. The intention of these provisions was to ensure that the cab enclosure provided the machine operator with protection from objects penetrating the cab, without impeding the operator's vision.

OSHA stayed these provisions because it was concerned that this language could be misconstrued in ways that would reduce protection for machine operators. OSHA is revising the final rule to require that logging machines manufactured after August 1, 1996, have cabs which are completely enclosed, including at entrances (paragraph (f)(3)(vii)). The revised provision also clarifies that the

[4] The final rule also provides that ROPS and FOPS required on logging machines placed into initial service after the effective date must also meet the requirements of SAE J397, April 1988, ''Deflection Limiting Volume—ROPS/FOPS Laboratory Evaluation.'' The 1988 standard updated a 1979 SAE standard on deflection limiting volume. OSHA notes that there is no functional difference between the criteria of the 1988 and 1979 SAE standards. Therefore, ROPS and FOPS certified to meet the requirements of either the 1988 or 1979 SAE standards shall be deemed to be in compliance with the final logging standard. OSHA is revising the compliance directive to reflect this.

[5] OSHA intends the term ''cab'' to include any machine operator station, even if it is not a total enclosure providing weather and other protection.

enclosure must be constructed with mesh material (with openings no greater than 2 inches at its least dimension), or with other material(s) which the employer demonstrates will provide equivalent visibility and protection from penetrating objects.[6]

While some logging machines currently manufactured do meet this requirement, others do not. For those logging machines manufactured on or before August 1, 1996, OSHA is clarifying in paragraph (f)(3)(viii) that such machines may either comply with revised paragraph (f)(3)(vii) or continue to meet the protective canopy requirements specified in the 1971 pulpwood logging standard.[7]

Paragraph (f)(7)(ii)—Machine Brakes

In the final rule, OSHA required that logging machines be equipped with service brakes (primary brakes) (paragraph (f)(7)(i)), and a secondary braking system, such as emergency brakes or parking brakes (paragraph (f)(7)(ii)). The final rule specified that the secondary braking system be sufficient to stop the machine, in the event that the service brakes fail, and to maintain parking performance.

OSHA stayed paragraph (f)(7)(ii) insofar as it implied that parking brakes were adequate secondary brakes for stopping a moving logging machine if the service brakes failed. Primary brakes (service brakes), secondary stopping brakes (backup brakes), and parking brakes are all necessary devices for logging machines. OSHA is correcting paragraph (f)(7)(ii) to clarify that logging machines placed into initial service after September 8, 1995, must be equipped with three braking systems—service brakes, secondary brakes and parking brakes.

Some older machines were manufactured with primary brakes, but without secondary or backup brakes, and OSHA has learned that retrofitting these machines may not be feasible. OSHA is permitting these older machines to remain in use, provided that the employer assures the service brakes are inspected and maintained at their designed level of effectiveness. Therefore, OSHA is correcting paragraph (f)(7)(ii) to specify that only machines placed into initial service on or after September 8, 1995 must be equipped with secondary and parking brakes.[8]

Paragraph (g) (1) and (2)—Maintenance and Inspection of Employee-Owned Vehicles

The revised logging rule required employers to assure that any vehicle used off public roads to perform any logging operation, including transporting employees, be maintained in a serviceable condition and be inspected before it is used during a work shift. OSHA agreed to reconsider the maintenance and inspection requirements as they pertained to employee-owned vehicles and stayed the requirements for six months.

OSHA explained in the preamble to the final rule that it was aware that logging employees operate vehicles on private roads or on private property where there may be no roads or only rugged trails. The WIR survey shows that vehicle operators and employees riding in such vehicles are being injured in vehicle accidents where employees are being asked to drive vehicles over terrain that may be quite hazardous (e.g., extremely muddy, steep, and unlevel). For example, according to the WIR survey, there were 33 mobile equipment accidents resulting in employee injury during the three-month survey period (Ex. 2–1). Of these, 24 (72 percent) occurred during other than skidding or yarding operations (Ex. 2–1). In addition, the WIR survey reported 34 injuries on employer-built roads during the same period (Ex. 2–1).

Based on the record evidence, OSHA determined that it was important that logging employees on and between logging sites only drive vehicles that are in proper condition and of the appropriate type for the terrain in question. Because many employers require or permit employees to drive their own vehicles over this terrain to reach the logging work site, OSHA applied the inspection and maintenance requirements to these vehicles as well. However, OSHA is also aware, and others have pointed out, that most States do have periodic vehicle inspection requirements. These inspections are more detailed and comprehensive than the inspection contemplated by the logging rule. As such, OSHA believes that such inspections are adequate, at least with regard to employee-owned vehicles, and that imposing additional vehicle inspection requirements on logging employers is unnecessary. Therefore, OSHA is revising the final rule to apply the vehicle inspection and maintenance requirements only to vehicles which the employer owns, rents or leases. OSHA has done this by revising the definition of ''vehicle'' covered by the final rule. OSHA also notes that the employer has the duty to provide safe access to the worksite.[9]

With regard to inspections of vehicles, as well as other equipment covered by the final rule such as personal protective equipment, tools, and machines; OSHA never intended that the employer must conduct the actual inspection of such equipment. The compliance directive clarifies that employers may delegate to others, including employees using the items, the performance of inspection and maintenance tasks; but ultimately the employer remains responsible for safe equipment at the workplace. There are different ways in which the employer can assure that equipment is properly maintained and inspected. Employers can inform employees of maintenance and inspection procedures during training, reinforce the requirements during regular safety and health meetings, and conduct spot checks of equipment.

Finally, OSHA notes in the compliance directive that equipment inspection requirements in the final rule apply only if the equipment is used during the work shift. If it is not to be used, it does not need to be inspected.

Paragraph (h)(2)(vii)—Backcuts

The final rule requires that backcuts be placed above the horizontal face cut

[6] OSHA is noting in the revised compliance directive that material(s) that satisfy the performance criteria of the Society of Automotive Engineers SAE J1084, April 1980, ''Operator Protective Structure Performance Criteria for Certain Forestry Equipment'' are deemed to comply with the revised provision.

[7] OSHA notes and is clarifying the compliance directive to indicate that extended compliance time and exceptions to compliance apply only where specifically indicated. With regard to all other provisions, the extensions and exceptions do not apply for machinery already in use. The employer must assure that any machine used for logging operations is in compliance with the other provisions of paragraph (f)(3). For example, all machines used in logging operations, whether initially placed in service before or after the effective date, must have two means of egress. To the extent that any machine in service does not have a second means of egress, the machine must be retrofitted (e.g., replacing the stationary windowshield with a hinged window to allow egress) or removed from service.

[8] OSHA is noting in the revised compliance directive that logging machines with braking systems meeting the Society of Automotive Engineers standards for forestry (SAE J1178, June 1987, ''Braking Performance—Rubber Tired Skidders'') or earthmoving (SAE J1026, April 1990, ''Brake Performance—Crawler Tractors and Crawler Loaders'') equipment are deemed to be in compliance with the final rule, provided that the employer assures that such braking systems are maintained in a serviceable condition.

[9] OSHA is deleting from revised paragraphs (g)(1) and (g)(2) specific reference to application of vehicle maintenance and inspection requirements to vehicles used to transport employees. Since transportation of employees to, from and between logging sites off public roads is included in the definition of logging operations, OSHA believes it is not necessary to repeat the reference in these provisions.

in all felling except tree pulling operations. OSHA was requested to clarify whether the requirement in paragraph (h)(2)(vii) applies to Humboldt cutting and open face felling. OSHA stayed for six months the backcut requirement in paragraph (h)(2)(vii) as it applied to felling trees using the Humboldt cutting method. OSHA also explained that it would use the six months to further clarify the backcut requirement as it applies to both cutting methods.

Open face felling. After OSHA published the final rule, the Agency was requested to clarify whether the backcut requirement applied to open face felling. In brief, the backcut requirement does not apply to open face felling, and OSHA is clarifying the final rule and compliance directive accordingly.

In open face felling, two facecuts are made diagonally into the stem so there is no horizontal face cut. The backcut requirement applies only where a horizontal face cut has been made. Where a horizontal face cut is used, there is a greater potential that the notch (or wedge) is not as open or that very little or no hinge wood will be left if the backcut is made at the same level. This may result in the tree kicking back or falling in the wrong direction.

In open face felling, the notch is much more open than in conventional felling. As such, there is little or no danger that placing the backcut at the level of the notch will result in the notch closing (i.e., the falling tree hitting the stump) too soon and the tree kicking back off the stump. This is because the openness of the notch permits the tree to fall in the intended direction for a greater interval before the notch closes and the hinge breaks. Either the tree is on the ground or almost parallel to the ground, and thus committed to falling in the intended direction, before the hinge breaks. In addition, there is little danger that no hinge wood will be left to help direct the falling of the tree.

Humboldt cutting. In the Humboldt cutting method a horizontal cut is made into the face of the tree and a notch is cut below the horizontal cut at an angle. By contrast, in conventional felling, the notch is cut at a diagonal above the horizontal face cut.

In several regions the Humboldt cutting method has replaced the conventional method. The Humboldt cutting method is heavily used in the western States and is also used on high quality trees, such as veneer logs and redwoods. Loggers have switched from the conventional to the Humboldt method primarily for productivity reasons. In Humboldt cutting, the notch is made into the stump rather than the log (Ex. 9–15). Thus, if properly done, the cutting of the notch does not result in the loss of useable wood. OSHA is aware that some fellers who use the Humboldt cutting method prefer to make the backcut at the level of the horizontal face cut, but the record indicates their preference is due to these production rather than safety reasons (Ex. 9–15). Some contractors and mills want log butts to be smooth. By placing the backcut at the same level as the face cut, these loggers do not have to make an additional cut after the tree is felled in order to smooth out the log butt. In some cases, to make the additional cut might require walking down a hill where the felled tree has rolled or the additional cut might have to be made by the employee bucking the tree.

In logging operations where the Humboldt method is most heavily used, fellers most often only cut a notch that is no greater than 45 degrees, making the openness of the notch similar to that of conventional felling. Fellers do this in order to keep the stump as short as possible and thereby reduce the lost of useable wood. At 45 degrees, the face notch alone does not fully address both the hazards of misdirected falling and kickback.

Proper backcuts that provide sufficient hinge wood are critical. Sufficient hinge wood helps to hold the tree to the stump during most of its fall and thereby allows the hinge to steer the falling tree in the right direction. If the hinge is inadequate or if pressure is placed on the hinge, it will break too soon and the tree will be left without a steering mechanism. Without the hinge wood, the tree may twist and bend, and fall in the wrong direction. (OSHA is revising paragraph (h)(2)(vi) to expressly state that this requirement is intended to address the hazard of misdirected falling.)

Placing the backcut above the horizontal face cut is also necessary to provide a platform to block the tree from kicking back once the hinge does break. Where there is a potential that the face notch will close before the tree hits the ground, which is the case with most cutting using the conventional and Humboldt methods, this platform is necessary to prevent kickback. Where the backcut is at the same level as the horizontal cut, there is no platform to block the backward movement of the tree should kickback start to occur. (OSHA is revising paragraph (h)(2)(vii) to expressly state that this requirement is intended to address the hazard of tree kickback.)

In both, misdirected falling and kickback, the feller or other team member could be hit by the tree. The risks of such injury are further increased if other conditions are present, such as wind, sloping terrain, or tree lean.

To address these risks, most State logging safety rules require that backcuts be above the face cut in all felling, including Humboldt cutting. For example, in Oregon, a State-plan State, the backcut requirement applies to any tree with an 8-inch or larger diameter base height. Only the State of Montana, which has advisory criteria, permits the backcut to be level with the face cut in Humboldt cutting.

After reviewing the record in this rulemaking, OSHA reaffirms that the record supports the necessity of applying the backcut requirement specified in paragraph (h)(2)(vii) to Humboldt cutting (Ex. 2–1, 4–61, 4–64, 26A; 59 FR 51675). The record clearly shows that manual felling is the single most dangerous occupation in logging. The BLS Census of Fatal Occupational Injuries indicates that more than one-half of all logging employees killed in 1992 were felling trees at the time of their accident (59 FR 51675). In addition, the WIR survey indicated that almost one quarter of all employees reporting injuries were felling trees at the time they were injured, and that the most frequently reported cause of their injuries was being hit by a tree (Ex. 2–1). The record also shows that tree kickback and misdirected falling are two of the major reasons why employees are hit by falling trees. For example, the record contains many reports of employee injuries and deaths due to misdirected falling and tree kickback (Ex. 4–61, 4–64, 26A).[10]

Proper backcuts where adequate hinge wood and a platform are left will reduce the potential for such injuries (Ex. 4–5, 21D, 22, 38I). In fact, manual felling training materials entered into the record instruct fellers, for safety reasons, to place the backcut above the horizontal face cut (Ex. 4–5, 4–6, 4–10, 4–19, 4–169, 4–173, 5–1, 5–29, 8–18, 21, 29). Moreover, the record demonstrates that the primary reason that fellers prefer to place backcuts at the same level as the face cut is not because of safety, but rather because they do not want to have to make an additional cut to trim the log butt. However, there is no evidence in the record which

[10] It has been argued by some parties that placing the backcut above the horizontal face cut is only necessary in selective cutting operations, and not in clear cut operations. The reason they give is that in clear cut felling trees are felled into the downhill side of the slope and there is no danger the tree will kick back or fall against gravity in the wrong direction. However, the injury data in the rulemaking record do not support this position. According to the WIR survey, 62 percent of all injuries reported occurred in clear cut operations.

indicates that making an additional cut would have any significant impact on productivity.

The purposes of this standard are best realized by requiring that the backcut provide sufficient hinge wood to direct the fall of the tree, and that the backcut be above the horizontal face cut so a platform is formed. These safe manual felling practices will help to ensure the tree falls in the intended direction and does not kick back off the stump when the notch closes. OSHA is revising the final rule and compliance directive to more clearly reflect OSHA's intent that these work practices be followed.[11]

OSHA has not specified in the final rule how far above the face cut the backcut must be placed. By contrast, the Washington and Michigan logging standards require that the backcut be approximately 2 inches above the face cut to provide adequate hinge wood. On the other hand, the Oregon logging rule does not specify a minimum vertical distance. OSHA believes that a backcut placed at least one inch above the face cut should provide an adequate platform to prevent kickback and to allow the hinge to help steer the falling of the tree in the intended direction. OSHA believes that a one-inch platform would provide an adequate margin of safety for the feller while still providing the contractor with a fairly square-end log.[12]

[11] OSHA notes that one safe technique for making the backcut is to start the backcut with a plunge cut/bore cut to establish the hinge. The backcut should then be moved toward the back of the tree. This backcut method provides for two holding points until the tree is finally released. This backcutting method will prevent the tree from releasing too soon or moving before the feller has moved to a point of safety. The record shows that this backcutting method is a safe technique for felling (Ex. 9–20), and OSHA suggests this technique when conditions such as, but not limited to, tree lean, slope, and large tree size indicate that felling the particular tree may present additional hazards.

[12] OSHA's decision to require that backcuts in Humboldt cutting be above the horizontal face is based in part on the fact that most loggers currently using this method are making the notch the same size as in conventional felling—45 degrees. A 45-degree notch is generally not open enough to control for both misdirected falling and kickback hazards. However, where a notch of 70 degrees or greater is cut, the notch in Humboldt cutting acts as it does in open face felling. As discussed above, in open face felling, because of the 70- to 90-degree notch, it is unlikely that the tree will fall in the wrong direction or kick back. OSHA stresses that this is due to the openness of the notch rather than the type of cutting method being employed. As such, OSHA is clarifying the compliance directive to indicate that where the notch is at least 70 degrees, it is not as critical that the backcut be above the horizontal face cut or the notch of the face cut, regardless of whether the open face or Humboldt method is being used.

Other Corrections and Clarifications

Paragraph (c)—Definitions

Logging operations. The definition of ''logging operations'' in the final rule includes ''marking'' operations. OSHA is revising this definition to clarify the type of marking operations covered by the logging standard. OSHA intended that marking include operations that are done attendant to and at the same time as felling, cutting and moving trees in a particular logging work site. Such marking operations include marking danger trees, and sizing and marking felled trees to be cut to length. These particular marking operations inform loggers working in the area or on that tract whether and how to cut trees.

OSHA did not intend marking operations to include those operations that are done independently of or in advance of cutting trees in a particular logging site. These preparatory operations include marking of tracts of land to determine the order in which tracts will be logged, and marking and designating boundaries of tracts of land that will be bid upon for harvesting. Harvesting of trees does not take place on the tracts while these marking operations are being done. These preparatory operations do not involve the hazards of logging operations, and the record indicates that the high injury and fatality rates in the logging industry are not associated with these activities (e.g., Ex. 2–1). Therefore, OSHA is revising the compliance directive to indicate that marking activities which take place in advance of and separate from tree harvesting are not covered by the final logging rule.

For the same reasons, OSHA is also revising the compliance directive to specify that incidental marking of danger trees or wildlife trees at the same time tracts of land are being marked also is not covered by the final rule if no tree harvesting is undertaken in the area at this time.

OSHA is also revising the definition of logging operation to more accurately express its intention about what transportation activities the Agency considers to be logging operations covered by the final rule. The final rule had stated that logging operations include transport of machines, equipment and personnel from one logging site to another. The Agency had intended the definition to include transportation of machines, equipment and personnel to and from as well as between logging sites. As discussed above, with regard to transportation of employees, the revised rule includes only their transportation in vehicles owned, rented or leased by the employer.

OSHA has been requested to clarify what loading and unloading operations are covered by the final rule. OSHA is revising the compliance directive to indicate more clearly that loading of trees at the logging work site and loading/unloading of trees at trans-shipment points such as satellite wood yards are covered by the final rule. With regard to unloading logs at pulp, paper and paperboard mills (hereafter pulp mills) and sawmills, OSHA has other standards which address some of the hazards associated with such unloading (*See,* Pulp, Paper and Paperboard Mills, 29 CFR 1910.261, and Sawmills, 29 CFR 1910.265). To the extent that hazards associated with unloading trees at these worksites are addressed by these other standards, they apply instead of the final logging rule. For example, both the pulp mill and sawmill standards include provisions specifying how binders and stakes are to be released from the load of logs. As such, the similar provision contained in the logging final rule does not apply. However, to the extent that the final logging rule addresses hazards not covered by the pulp and saw mill standards, the logging rule applies if it is a logging operation. For example, neither the pulp mill or sawmill standards address the hazards faced by log truck operators who remain in their cabs during unloading. Thus, paragraph (h)(6)(iii) applies to loading and unloading of trees at pulp mills and sawmills as well as at logging sites and satellite log yards.

Machine. In the final rule OSHA included a definition of the machines covered by the logging rule. The definition included material handling equipment that is operated off-road. OSHA was asked to clarify whether the definition of logging machine includes aircraft, such as helicopters. OSHA never intended that logging machines include airplanes or helicopters and is clarifying its intention by expressly excluding airplanes and helicopters from the definition of machines covered by the final rule.

Paragraph (d)(1)(iii)—Gloves

The final rule specified that all loggers who handle wire rope must wear cotton gloves or other hand protection that the employer demonstrates provides equivalent protection. The proposed rule would have required employees to wear heavy-duty puncture resistant gloves such as leather. Many commenters said that such gloves would pose additional hazards and urged OSHA to permit employees to wear

cotton gloves (Ex. 5–17, 5–29, 5–54, 5–74 through 5–92; Tr. OR 104). They said that during winching leather gloves would not tear away when caught on a ''jagger'' (i.e., broken wires of a wire rope) and would forcibly pull the logger's hand. This could result in a more severe laceration of the hand, or could cause the employee to be dragged into the machinery or to fall. Thus, they said the leather glove could turn a minor injury into a more serious injury. Based on this, in the final rule OSHA specified that cotton gloves must be worn.

OSHA is correcting the final rule to indicate that it was not the Agency's intention, in specifying cotton gloves, that employees be permitted to have their hands on wire rope when winching is started or underway. OSHA emphasizes that employees are not permitted to be handling the winching line when the yarding machine is in operation. The final rule requires that they must be clear of the choked log *before* the yarding machine operator begins to winch the choked trees. Paragraph (h)(5)(i) of the final rule clearly requires that before any log is moved that employees must be in the clear. In addition, paragraph (h)(5)(v) requires that employees who assist with yarding (i.e., choking logs) must signal the machine operator that they are in the clear and the machine operator must not begin winching the load until he has clearly understood the received signal that other employees are in the clear (paragraph (h)(5)(v)). OSHA included these requirements because employees have been injured where logs being winched hit obstacles, causing them to swing suddenly and strike an employee (Ex. 2–1, 4–63, 4–64).

OSHA is making clear in the revised provision what hazards hand protection are intended to address—puncture wounds, cuts and lacerations that could occur from handling wire rope, especially rope with broken wires. Employers are free to use cotton gloves, provided they adequately address the hazards of handling wire rope. Employers are also free to use rubber gloves with cotton liners or leather gloves that protect employees from the hazards associated with handling wire rope as well as from extreme environmental conditions.

Paragraph (d)(1)(iv)—Leg Protection

Some parties requested OSHA to exempt from the leg protection requirement the incidental use of chain saws. However, OSHA has not made such an exemption because the record clearly does not support it.

As OSHA explained in the preamble of the final rule, the risk of injury from chain saw is present whenever a chain saw is being used (59 FR 51702). The WIR survey showed that 20 percent of injuries reported were chain-saw injuries (Ex. 2–1). Chain-saw kickback and sudden cut-through, which are major causes of chain-saw injuries, are not dependent on whether the chain saw is used frequently or regularly by the operator. There is no evidence in the record that employees who only occasionally operate chain saws are not subject to these risks. OSHA believes that a feller, who operates a chain saw as a regular part of the job, and a logging truck operator, who may operate a chain saw occasionally or incidentally to operating a vehicle, both face a significant risk of injury when using a chain saw. As such, OSHA believes that leg and foot protection are needed whenever an employee is operating a chain saw. The revised compliance directive notes that the leg protection requirement applies to any employee who operates a chain saw for any amount of time.

OSHA realizes that protective material may be damaged or destroyed in the process of stopping a chain saw. Because of this, OSHA is revising the compliance directive to indicate that when the outer covers of the protective equipment have been penetrated it does not necessarily mean that the equipment is no longer serviceable. However, where there are also cuts or tears in the protective material of the leg protection or logging boot, such equipment is no longer in serviceable condition. OSHA agrees with manufacturer warning labels that such cuts and tears in the protective material compromise the ability of the PPE to provide the level of protection which is necessary. OSHA is revising the compliance directive to specify that in such situations footwear and leg protection cannot be repaired and must be replaced with serviceable PPE.

Paragraph (d)(2)(i)—Location of First-Aid Kits

In the final rule, OSHA required that employers provide first-aid kits at each landing, on each employee transport vehicle, and at each worksite where felling is being conducted. After the final rule was published, OSHA was requested to clarify whether first-aid kits must be provided at both active and inactive landings. It was not OSHA's intention to require employers to provide first-aid kits at landings which are not currently in use. OSHA is correcting the final rule to clarify that the provision of first-aid kits at landings refers to only ''active'' landings.

OSHA was also requested to clarify at what point a felling work site is considered separate or remote from another work site, thus triggering the requirement for an additional first-aid kit. In the revised compliance directive, OSHA has indicated that where employees are cutting trees more than one-half mile from an active landing or an employee transport vehicle, a first-aid kit also must be provided at that work site. In these situations, the first-aid kits which are at the landing or on the vehicle are too distant to be considered immediately accessible.

The compliance directive also indicates that where conditions are not optimal, such as steep or mountainous terrain, very muddy terrain, heavy brush, or snowy and icy conditions, first-aid kits cannot be as far as one-half mile from a cutting area and still be considered immediately accessible. Traveling under such conditions is likely to take far longer than under optimal conditions, thus rendering the first-aid kit too isolated to be of any prompt use. Where such conditions exist or are reasonably anticipated, the employer will have to evaluate their severity in determining whether cutting operations need first-aid kits to be located closer to the worksite.

Finally, OSHA is also correcting the final rule to clarify which felling work sites need first-aid kits. In the final rule, OSHA stated that first-aid kits must be provided ''at each work site where felling is being conducted.'' It was OSHA's intention that felling work sites include any work site where trees are being cut; that includes limbing, bucking, and trimming as well as felling. The rulemaking record clearly shows there are a significant number of injuries wherever trees are being cut. For example, the WIR survey indicated that 23 percent of employees reporting injuries were felling trees and 27 percent were limbing and bucking felled trees (Ex. 2–1). Injuries to these employees are primarily due to chain saws or being hit by a falling or rolling tree. Because of the significant risk of injury, employees performing all of these logging operations need to have immediate access to a first-aid kit.

A further review of the record indicates that in many situations limbing and bucking are not done at the landing, but rather, at the place where the tree is felled (e.g., Ex. 4–63, 4–64, 26A). In addition, in-forest limbing and bucking is not always done near felling operations. For example, felling operations may be far from limbing and bucking crews. To the extent that a limbing or bucking work site is more than one-half mile from the nearest first-

aid kit (i.e., felling area, active landing, or employee transport vehicle), OSHA is clarifying that a first-aid kit must also be provided for that limbing or bucking work site.

Paragraph (d)(5)—Environmental Conditions

The final rule requires that employees terminate work and move to a safe location where environmental conditions may endanger them in that work or at a given location. While OSHA cannot specify every environmental condition that might necessitate employees moving to a place of safety, OSHA did provide a list of certain types of conditions that would create hazards for employees working in the area.

After publication of the final rule, OSHA was told that the provision was too broad and did not provide adequate instruction for compliance officers because it included conditions which did not pose a real possibility of danger for logging employees. However, OSHA believes that the final rule included clear examples of environmental conditions which would be considered dangerous for an exposed employee. Paragraph (d)(5) specifies that work stop and employees move to a place of safety in electrical storms (as opposed to rainy weather), dense fog (as opposed to pocket fog), heavy rain and snow (as opposed to wet weather), extreme cold (as opposed to cold weather), and mudslides (as opposed to muddy conditions). OSHA believes this list of extreme environmental conditions does identify hazardous conditions and provides adequate guidance for compliance officers.

It was also requested that OSHA revise these provisions to require that employees be moved to a place of safety only if winds were ''gale force.'' Gale force winds are defined as those which are at least 40 miles per hour. OSHA is aware, however, that even winds of less than gale force can significantly affect the fall of a tree, particularly if other adverse conditions are present (e.g., leaning tree, steep terrain, large tree, lodged tree, tree under pressure). As such, OSHA does not believe one specific wind speed is an appropriate indicator of whether an environmental hazard is present. However, OSHA is revising the final rule to more fully express the type of wind conditions it believes create a hazard for an employee working in the area. The final rule and compliance directive are being revised to indicate that all work must terminate and each employee shall move to a place of safety when strong winds which may adversely affect the fall of a tree are present.

OSHA also included fires among hazardous environmental conditions. Some parties have interpreted this example as requiring employees to leave the area any time a fire starts rather than putting out the fire. However, the final rule, viewed in its entirety, does not support that interpretation. For example, paragraph (d)(4), directly preceding the environmental conditions provision, requires employers to provide fire extinguishers on each machine and vehicle. This requirement contemplates that an employee may be called upon to put out a small fire which has started. However, if a fire were to start in an area where there is no fire extinguisher or other equipment or supplies which would allow the employee to safely suppress it, the employer would be responsible for assuring that the employee is moved out of the area of danger. Likewise, where a fire, because of its size, intensity or the conditions of the area, creates a hazard for an employee who remains in the area, either to work or attempt to suppress the fire, the employer must also assure that employee is moved from the area of danger. OSHA notes that the standards on fire protection in subpart L of Part 1910, and not the revised logging standard, govern the fighting and suppression of fires at logging worksites.

Paragraph (d)(6)(iii)—Working Within Visual or Audible Contact

In the final rule, OSHA requires that each employee work within visual or audible contact of another employee. OSHA was requested to clarify whether this requirement applies only to employees working at a logging site or also to employees working away from logging work sites (e.g., logging vehicle operators transporting a load of logs off the logging site on public roads).

OSHA intended that this provision of the final rule apply to each employee working at a logging work site, including watchmen and other employees performing logging operations at remote logging work sites. OSHA did not intend the requirement to apply to vehicle operators who are not at the logging site, but rather driving vehicles miles away. However, this provision does apply to vehicle operators while they are at a logging work site. OSHA is revising the final rule to clarify its intention and to provide the exception for vehicle operators working away from the logging work site.

Paragraph (d)(6)(iv)—End of Workshift Accounting of Employees

The final rule requires that the employer account for each employee at the end of each workshift. OSHA was requested to provide additional clarification of this requirement in the revised compliance directive.

First, the employer need not personally conduct the actual end of shift accounting of each employee. The employer may delegate this task, but the employer remains ultimately responsible under the standard for assuring that employees are not inadvertently left in the woods, especially an employee who may be injured.

Second, this provision does not require employers to prohibit employees from remaining at the work site after the end of the work shift to engage in personal activities, such as hunting, camping, or cutting fire wood for personal use. Rather, OSHA's intent was to assure that no employee, particularly an injured employee, be inadvertently left in the woods without assistance. The rulemaking record includes several reports of accidents in which employees were not discovered in a timely fashion and died (Ex. 4–64, 26A). The revised compliance directive also makes clear that after the workshift has ended and the employer has ascertained that the employee is done with work, including overtime work, and is safely accounted for, the final rule does not prohibit the employer from allowing the employee to remain in the area for personal reasons. OSHA is revising the compliance directive to reflect this.

Paragraph (d)(9)(i)—Storage and Handling of Flammable and Combustible Liquids

The final rule requires that flammable and combustible materials be stored, handled and transported (hereafter stored) in accordance with the requirements of subpart H of Part 1910. OSHA was requested to provide an exception from subpart H to allow logging machine operators to carry plastic cans of chain-saw fuel for refueling away from fueling stations, when necessary. Some parties have interpreted paragraph (d)(9) as prohibiting machine operators from storing and transporting logging machine fuel in 5-gallon plastic containers which are approved by Underwriters Laboratories (UL) or meet U.S. Department of Transportation (DOT) requirements. For the reasons discussed below, OSHA does not believe that an exception to subpart H

is necessary to allow the practice that these parties seek to authorize.

First, Subpart H permits Class IB liquids, which OSHA interprets as including chain-saw fuels, to be carried in 5-gallon plastic safety cans approved by UL or Factory Mutual (FM). Subpart H permits Class IB fuels to be carried in ''safety cans'' that have a maximum allowable size of 5 gallons (29 CFR 1910.106(d)). Safety cans are defined as containers approved by a nationally recognized testing laboratory (NRTL) and otherwise meeting the requirements of the definition. This requirement is broad enough to encompass plastic safety cans, provided that such containers are approved by a NRTL as meeting all the requirements of the definition. In response to concerns raised, OSHA also notes that UL and FM are recognized by the Agency as NRTLs for testing and listing equipment meeting the requirements of subpart H.

Second, subpart H also permits flammable and combustible liquids to be stored in containers meeting the requirements of regulations issued by the Hazardous Materials Regulations Board, Department of Transportation (*See,* 49 CFR 171–178). These regulations permit flammable liquids such as chain-saw fuel to be stored in plastic jerricans holding up to 5 gallons which meet DOT specifications for non-bulk packaging (*See,* 49 CFR 193.202(c) and 178.502).

Therefore, read in its entirety, the logging standard does not prohibit plastic safety containers under the conditions described above, and an exception is not necessary. OSHA is including this discussion in the revised compliance directive.

Paragraph (d)(9)(iii)—Machine Fueling

The final rule requires that tools, machines and vehicles be shut off during fueling. The purpose of this provision is to eliminate potential sources of ignition when handling flammable and combustible liquids in order to prevent a fire from erupting.

OSHA is revising the rule to permit diesel-powered machines and vehicles to be fueled while at idle, provided that continued operation is intended and that the employer follows safe fueling and operating procedures. OSHA believes this exception is warranted because the hazard which this provision seeks to address, sudden flash fires, is typically not present during fueling of diesel-powered engines. This is because diesel fuel has a higher flash point than that of gasoline, and unlike gasoline its vapors do not evolve as suddenly. In fact, in many cases diesel fuel must be heated before it will give off sufficient vapors to ignite. As such, there is little potential for fire if a diesel-powered engine is running during fueling.

At the same time, however, OSHA is requiring that other safe fueling and operating procedures be followed during fueling of diesel-powered machines and vehicles. OSHA is revising the compliance directive to indicate that employers must train employees in safe practices during fueling. These include vapor containment, spill prevention, and other procedures the operator must follow when leaving the machine cab to fuel the engine.

Paragraph (d)(9)(iv)—Starting Fires

The final rule required that flammable and combustible liquids not be used to start fires. The purpose of this provision was to prevent fires being started by employees from erupting and burning them and others.

After publication of the rule, OSHA was requested to allow fires to be started with chain-saw fuel, which is a flammable liquid, provided that the fuel was not used in an unsafe manner or in a situation which might create a hazard for any employee. OSHA agrees that the rulemaking record does not identify the use of chain-saw fuel to start fires as a major cause of accidents and injuries in the logging industry (e.g., Ex. 2–1). However, the record does indicate that using chain-saw fuel can create a hazard in certain situations. For example, a Forest Products Accident Prevention Association (FPAPA) Industry Alert reported that employees suffered third-degree burns when a fire in a warming hut was reignited with chain-saw fuel and caused an explosion (Ex. 4–64). In that case, an employee had added wood and chain-saw fuel to a woodstove which had been started earlier in the day. The coals left over from the earlier fire vaporized the fuel and then ignited it. The action that the employer could have taken to prevent the accident included prohibiting the use of chain-saw fuel to start a fire in an enclosure. In addition, according to FPAPA, the accident could have been prevented if the employer had trained the workers about the hazards of improper fuel handling.

OSHA is revising the final rule to allow flammable and combustible liquids, such as chain-saw and diesel fuel, to be used to start a fire. OSHA believes that this flexibility will allow piles of wood or slash to be burned when permitted by forestry officials. However, the revised provision does not permit flammable and combustible liquids to be used whenever a fire is needed. The revised provision only permits such liquids to be used where the employer assures that their use does not create a hazard for an employee. OSHA agrees with FPAPA that employers must train employees to know under what conditions it is safe to start a fire with chain-saw fuel and those situations in which using fuel may create a hazard for an employee. In the compliance directive OSHA is indicating particular situations in which starting a fire with chain-saw fuel would not be safe. For example, using chain-saw fuel to start a fire in an enclosure is not safe. There is a greater chance that fuel vapors may collect in the enclosed area and ignite or cause an explosion. The record shows there are other ways to start fires where chain-saw fuel may create a hazard. For example, light-weight fire starters made of sawdust and wax are available.

Paragraph (e)(2)(iv)—Refueling Chain Saws

The final rule required that chain saws be fueled at least 20 feet from any open flame or other source of ignition and started at least 10 feet from the fueling area. The purpose of these provisions is to assure that chain-saw fuel was kept a minimum safe distance from any potential source of ignition.

After publication of the final rule, some parties pointed out that OSHA had established two different minimum safe distances between fuel and ignition sources—20 feet between fueling areas and ignition sources, and 10 feet between fueling areas and chain saw startup, which is another potential source of ignition. They urged OSHA to establish a uniform safe distance and recommended that OSHA adopt a 10-foot minimum safe distance. While OSHA believes that an open fire is a much more likely source of ignition than a chain saw being started, nonetheless OSHA believes that a 10-foot distance is adequate in both situations. This is because in the out-of-doors, where constant air movement dissipates vapors, it would be unlikely there could be a concentration of flammable vapors sufficient to cause an increased potential for fire at a distance greater than 10 feet. Therefore OSHA is revising the final rule and compliance directive to establish a 10-foot minimum safe distance between fueling areas and potential sources of ignition.

Paragraph (e)(2)(vi)—Starting Chain Saws

The final rule requires that chain saws be started on the ground or where otherwise firmly supported. OSHA was requested to clarify expressly in the regulatory text whether ''drop starting''

a chain saw is prohibited under the final rule, and whether operators are allowed to start the chain saw while standing in an upright stance.

In the preamble to the final rule, OSHA explained that the purpose of this requirement was to assure that employees did *not* attempt to drop start chain saws. As noted in that discussion, an employee could lose his grip when drop starting a chain saw and the saw could fly upward and cut the employee. Nonetheless, OSHA is amending the final rule to emphasize the Agency's intention that drop starting of chain saws is prohibited.

With regard to employee position during chain-saw start up, nothing in the final rule prohibits an employee from standing in upright when starting a chain saw, provided that the employee has firmly supported or secured the chain saw. For example, a chain saw operator would be in compliance with the final rule if he rested the chain saw firmly on a log or other stationary item and started the chain saw while standing upright. OSHA notes that such a starting position is a safe technique because it provides protection both from chain saw kickback and from overexertion of the back.

Paragraph (e)(2)(xii)—Carrying Chain Saws

The final rule requires that chain saws be carried in a manner that will prevent operator contact with the cutting chain and muffler. OSHA's intention is to assure that chain-saw operators are not cut by the saw or burned by the hot muffler when carrying the chain saw between felling points.

The record indicates there are certain devices currently available and used in the logging industry to prevent cuts and burns (Ex. 5–21, 5–36, 5–63), including leather and felt shoulder pads. By citing these examples, OSHA did not intend to imply that these particular devices are required by the final rule. In fact, OSHA expressly stated in the preamble that ''any other method of carrying the chain saw that prevents these hazards would also meet this requirement'' (59 FR 51713). OSHA is including this clarification in the revised compliance directive.

Paragraph (e)(2)(xiii)—Retreating With Chain Saws

The final rule required that after cutting a tree the feller must shut off or idle the chain saw before beginning his retreat. OSHA's intention was to help assure that employees are not cut by a running chain saw when they are moving quickly to a safe distance from the falling tree. As discussed in the preamble, a significant number of chain-saw injuries result from falling on the saw or losing the grip on a running saw (Ex. 2–1). As a result, any time a feller moves with a chain saw, precautions must be taken to prevent contact with the moving chain. These precautions include shutting off the saw, engaging the chain brake, or idling the engine by releasing pressure on the throttle and grasping the front handle.

It has been pointed out to OSHA that it takes a moment's delay for a saw to idle down once the throttle is released. As was noted in the rulemaking record ''[t]he cutter may lose precious seconds worrying about compliance with the * * * standard, meanwhile a life could be in danger'' (Ex. 5–50). It is not OSHA's intention that the feller be required to remain next to the tree waiting for the chain saw to idle down before retreating a safe distance from the falling tree. Rather, OSHA's intention is that as soon as the feller releases the throttle, placing the machine into idle, he should immediately move on the retreat path a safe distance from the falling tree. Once the throttle is released, it should only take a brief moment a properly maintained chain saw to stop. OSHA is revising the final rule and compliance directive to more accurately express OSHA's intention.

Paragraph (f)(3)(i)—Protective Structures for Logging Machines

The final rule requires that the following logging machines placed into initial service after February 9, 1995, have FOPS and/or ROPS: tractors, skidders, swing yarders, log stackers and mechanical felling devices. OSHA intended that the term ''log stackers'' be viewed as a general term covering any logging machine that stacks logs during loading and unloading. However, the more common term used in the industry to refer to machines that load and unload logs is ''log loader.'' OSHA is therefore revising the final rule to clarify that paragraph (f)(3)(i) covers log loaders.

Paragraph (h)(1)(ii)—Unfamiliar or Unusually Hazardous Conditions

This section requires that the immediate supervisor be consulted for approval when unfamiliar or unusually hazardous conditions are encountered before cutting is commenced. OSHA included this provision in the final rule because the record indicates that many injuries occur when inexperienced employees encounter unfamiliar situations, and even when experienced loggers believe they can handle particularly hazardous situations on their own (Ex. 2–1, 4–63, 4–64, 26A).

OSHA was requested to clarify the situations which are intended to be covered by this provision. While OSHA cannot provide an exhaustive list of the situations which may necessitate the employee consulting with a supervisor, there are certain situations which are clearly covered by this paragraph. These situations include worsening weather conditions (e.g., weather changes which begin to impair the logger's vision); deepening snow or mud which begins to affect a logger's mobility; felling very large or very tall trees; cutting trees whose lean, structure, or location make it difficult to fell in the desired or safest direction; and using a driver tree to fell a danger tree. These are situations in which loggers have been killed or severely injured because the conditions caused unexpected results during felling (Ex. 2–1, 4–63, 4–64, 26A). When these conditions arise, adding the supervisor's knowledge, training, and experience to the decisionmaking process should help minimize the hazards to which the logger may be exposed.

In addition to such consultation, it is also important in training for employers to train their new employees that when they encounter situations with which they have not dealt before, they need to work with the supervisor to safely handle the situation. This concept should also be reinforced in regular safety and health meetings.

Paragraph (h)(1)(iii)—Felling Distances

The final rule requires that while manual felling is in progress, yarding machines must not be operated within two tree lengths of the trees being manually felled. OSHA's intention was to assure that neither the yarding machine operator nor the manual feller is injured because of the independent actions of the other. For example, the feller may not be conscious of the fact that the yarding machine operator has entered the area to remove the tree which the feller has just cut. This work practice requirement helps to assure that yarding machine operators are not hit by other trees the feller or felling team has begun to cut.

After the final rule was published, OSHA was requested to clarify whether this provision prohibits tree pulling by teams of employees. Tree pulling was not intended to be prohibited under paragraph (h)(1)(iii). Indeed, paragraph (h)(1)(iv) addresses tree harvesting by employee teams, and sets forth procedures which must be followed where a team is necessary to fell a tree. In any event, OSHA is correcting the final rule to provide an explicit exception to paragraph (h)(1)(iii) for tree pulling operations. OSHA is also

revising the compliance directive to indicate that the procedures governing team felling also apply in tree pulling operations.

Paragraph (h)(1)(ix)—Domino Felling

The final rule prohibits domino felling. OSHA defined domino felling in the final rule as ''[t]he partial cutting of *multiple* trees which are left standing and then *pushed over with a pusher tree.*'' In the preamble OSHA explained that domino felling was a method of attempting to fell a line or row of trees by partially cutting the trees and then pushing the end tree into the others, thereby creating a domino falling effect. (59 FR 51699, 51724). There was considerable evidence in the rulemaking record that such a method of felling a group of trees is extremely dangerous because there is greater likelihood the line of trees will not fall in the intended direction or may not fall completely, thereby creating even greater hazards (Ex. 5–42, 5–46; Tr. W2 231, OR 659). The hazards associated with domino felling are further increased where a danger tree is among the line or row of trees to be felled using this chain reaction method. Therefore, OSHA emphasized that danger trees also could not be felled using domino felling.

After publication, OSHA was requested to further clarify whether the felling of a single danger tree by felling another single tree into it is prohibited under the final rule. The final rule does not prohibit this practice in all cases, since the definition of domino felling in the final rule does not include the felling of a *single* tree with another tree. The domino felling that is prohibited in the final rule is the felling of *multiple* trees with a pusher tree. OSHA is revising the final rule to identify practices which are not considered to be domino felling, and therefore, are not prohibited by the standard.

However, the practice of felling a danger tree by felling another one into it, while it is not prohibited, is not automatically permitted to be used whenever a danger tree is felled. Paragraph (h)(1)(vii) of the final rule also requires that where a danger tree is felled or removed, the feller must use a technique that minimizes employee exposure to the hazard. In some cases, felling a danger tree by felling another tree into it will not minimize employee exposure to the hazards, and may even increase the risk the feller faces in removing the danger tree. As OSHA pointed out in the preamble, commenters told OSHA that felling a danger tree by felling another one into it is a safe technique when used by an experienced feller, but only ''in certain situations'' (Ex. 5–74 through 5–92). Other commenters told OSHA that this technique is generally not considered safe practice (Ex. 5–42, 5–46). In clarifying that this technique is not prohibited under the final rule, OSHA is permitting that a danger tree be felled in this manner only where a careful examination of mechanical techniques is first made and where it is also determined that the hazards felling the danger tree in this manner can be sufficiently minimized. The revised compliance directive notes that felling a danger tree by this method does not always minimize employee exposure to the hazard under paragraph (h)(1)(vii), and emphasizes that a safer method to remove a danger tree is to pull the tree down with a skidder or mechanical feller (Ex. 5–43).

Paragraph (h)(2)(i)—Retreat Paths

The final rule requires that a feller must plan and clear a retreat path before he begins cutting a tree. This provision assures that the feller has an accessible path for moving away from the falling tree, especially if the tree falls in an unintended direction. The rulemaking record indicates that a significant number of injuries have resulted from not having a clear retreat path. For example, the WIR survey indicates that almost 15 percent of logging injuries reported resulted from loggers misjudging the time and distance required to move to a safe place (Ex. 2–1).

It has been pointed out to OSHA that while this provision requires employees to plan and clear a retreat path, it does not expressly state that the feller must take that retreat path a safe distance from the falling tree once the tree is cut. While OSHA is confident that the vast majority of employers and fellers understand the purpose of the retreat path, OSHA is correcting the final rule to make the retreat requirement explicit.

Paragraph (h)(3)(i)—Limbing and Bucking

The final rule requires that whenever rolling or sliding of the tree is reasonably foreseeable, limbing and bucking must be done on the uphill side of the tree. While it is possible to limb and buck from the uphill side in almost all situations, the Agency provided an exception for those cases where the employer demonstrated that it was not feasible to limb or buck from the uphill side. In those limited cases, the provision required that the tree be secured with chocks to prevent rolling, sliding or swinging.

After publication of the final rule, OSHA was told by various parties that they knew of no cases where manual bucking and limbing from the uphill side would be infeasible. They also said that the procedure of setting chocks itself would put the employee in a dangerous position. Therefore, they told OSHA that the exception allowing work on the downhill side should be deleted from the final rule.

A review of the rulemaking record supports these comments. There were no comments or hearing testimony identifying any situations in which it would be infeasible to buck or limb a tree from the uphill side. Moreover, the Agency is aware that machines can move trees to a stable position so there is no potential for rolling of the tree during limbing and bucking. Therefore, OSHA agrees that the exception to allow limbing and bucking from the downhill side is unnecessary, and is correcting the final rule to remove it.

Paragraph (h)(5)(v)—Yarding

The final rule requires that yarding lines not be moved unless the yarder operator has clearly received and understood the signal. This provision also specifies that when in doubt, the machine operator must repeat the signal and wait for a confirming signal before moving the line. OSHA intended the term ''yarder operator'' to be a generic reference to any employee operating a machine used for yarding, including a yarder or skidder. However, since a yarder is also a specific kind of yarding machine, the provision could be read as applying only to the operator of that particular type of machine. Because of the potential for misinterpretation, OSHA is correcting the final rule to more clearly express the Agency's intention that the provision apply to all machines used for yarding felled trees.

Paragraph (h)(5)(viii)—Hazardous Obstructions in Yarding

The final rule requires that yarding machines or vehicles and their loads must be operated with safe clearance from all obstructions. This provision was included in the proposed rule and there were no comments opposing it. However, after publication of the final rule, OSHA received requests for clarification of the language and scope of this provision.

OSHA is revising the final rule and compliance directive to more clearly define the hazards being addressed by this provision. OSHA intended that yarding machines and their loads be operated in a manner that prevents contact with *hazardous* obstructions. The types of obstructions which the record shows to be hazardous include, but are not limited to, boulders, danger

trees, stumps, log piles, power lines, and cable rigging (Ex. 2–1, 4–61, 4–64, 26A). OSHA is also revising the compliance directive to include examples of hazardous obstacles that have resulted in employee death and injury.

Paragraph (h)(6)(ii)—Loading

The final rule requires that only the machine operator and other essential personnel be allowed in the work area during loading and unloading. The work area covered by this provision is the immediate loading work area as opposed to the entire logging site (e.g., landing). OSHA is correcting the final rule and compliance directive to express more clearly the Agency's intention.

Paragraph (i)(7)(i)—First-Aid Training

The final logging rule requires the employer to assure that each employee receives or has received first-aid training, including CPR, which meets the minimum requirements set forth in mandatory Appendix B. OSHA was requested by some parties to clarify whether the provision requires employers to provide new employees with first-aid training before they are allowed to begin work, and if so, to permit employers to have a 90-day training phase-in period for new employees.

The final rule does not require employers to provide the first-aid training to their employees. Employers are only required to assure that every employee performing logging operations has a first-aid training certificate which is current. Employers are free to require, as a condition of employment, that new employees have or obtain a first-aid training certificate. As the rulemaking record indicates, there are many organizations, schools, extension services, and others throughout the country which provide first-aid training on a continuous basis.

At the same time, OSHA is aware that some employers do provide first-aid certificate training for new employees who do not have a current first-aid training certificate. Where employers elect to provide such training, the general training requirements of paragraph (i) require that it be provided prior to the employee's initial assignment. It is vital that new and untrained employees not be allowed to begin work until they have been trained.

Remote and isolated locations are typical of logging operations. If employees working in these locations do not have the necessary first-aid training, they would not be able to help themselves or others if an accident were to occur. For example, one fatality report submitted by APA involved a feller being sent to work alone in an isolated area (Ex. 26A). The feller suffered a cut to the upper leg and did not perform any first-aid on himself. Instead, he attempted to walk out of the woods but bled to death before he was found. Teaming an untrained employee with a trained logger would not solve the problem. In case of emergency, the untrained employee would not be able to provide first-aid assistance if it were his trained partner that was injured. Many crews work in pairs in remote areas and each crew member needs to be trained to help his partner.

Therefore, OSHA is not allowing a phase-in period for first-aid training. The employer is responsible for assuring that untrained employees have had first-aid training prior to initial assignment or, in the case of current employees, by the effective date of the final rule. OSHA believes that the logging rule can best reduce the number and severity of logging injuries if employees have a current first-aid training certificate before they begin logging operations.

Paragraph (i)(7) (ii) and (iii)—Frequency of First-Aid Training

The final rule requires employers to assure that each logging employee receives first-aid training at least every three years and CPR training at least annually. The final rule also requires the employer to assure that each employee's first-aid and CPR training certificate remain current. It has been suggested to OSHA that CPR training is only necessary every three years. For the following reasons, OSHA believes that the record does not support such a change.

As OSHA explained in the preamble to the final rule, the American Red Cross first-aid training program, which is the most widely used program in the country, requires first-aid training every three years and annual CPR training in order to maintain a current certificate (Ex. 5–42). The American Heart Association follows the same requirements for maintaining current certification. The American Medical Association also recommends following the training procedures established by the American Red Cross and the American Heart Association. In addition, States have established minimum requirements for first-aid training certification.

While OSHA is aware that some States only require CPR training every two years to maintain a current certificate (e.g., Idaho), there are no States which permit CPR certificates to remain current for three years. OSHA is correcting the final rule to conform its retraining requirements to the requirements established by State regulations and organizations that provide first-aid and CPR certificate training programs. Therefore, as long as the employer assures that each employee has a current first-aid and CPR training certificate which meet State requirements or the requirements of certifying organizations, the employer is in compliance with the final rule. To reflect this clarification, OSHA is deleting paragraph (i)(7)(ii) and redesignating paragraph (i)(7)(iii) as paragraph (i)(7)(ii).

Appendix A to Section 1910.266—First-Aid Kits (Mandatory)

The final rule specifies the minimum contents of first-aid kits that employers must provide. The minimum content list was developed in conjunction with OSHA's offices of occupational medicine and occupational health nursing.

After publication of the final rule, OSHA was requested by some parties to drop tourniquets from the required list of items in first-aid kits. They told OSHA that current first-aid training courses teach people to use direct pressure to stop bleeding and to avoid the use of tourniquets in all but the most severe cases or when no other method will work. They were concerned that if tourniquets were included in logging first-aid kits, their use would be encouraged rather than discouraged. While OSHA is confident that employees trained and certified in proper first-aid techniques will use tourniquets properly, OSHA is also aware that other items commonly present at logging sites could be used as tourniquets (e.g., belts, ropes) if the need arose. Therefore, OSHA is correcting the final rule to delete tourniquets from the mandatory appendix specifying required first-aid contents.

OSHA is also deleting recordkeeping forms from the list of mandatory first-aid kit contents. The recordkeeping forms referred to here were not OSHA 200 accident logs; rather, they were forms that would provide information for the health care provider about the employee's injury and condition if medical attention is necessary and the employee is unable to communicate. Nonetheless, OSHA is removing this requirement to avoid confusion with recordkeeping that is required in accidents and injuries in general. At the same time, OSHA emphasizes that employers should establish a method for communicating to health care providers information concerning injured employees.

OSHA is also deleting the requirement that first-aid kits contain diphenhydramine hydrochloride elixir or capsules (i.e., Benadryl). Even though this over-the-counter medicinal product is frequently used in the logging industry to reduce the effects of insect bites and bee stings, prescribing its use is beyond the scope of first-aid training in this standard.

The requirement that each first-aid kit contain blankets is being revised to indicate that each kit must, at a minimum, contain at least one blanket. OSHA intended the term blankets to be used generically and not to set forth a required number of blankets which must be present.

Finally, OSHA is correcting the splint requirement in Appendix A. In the final rule OSHA had specified that first-aid kits be equipped with wire splints. However, the rulemaking record indicates that other types of splints would be as effective as wire splints and OSHA did not intend to preclude their use. These include, for example, inflatable or air splints. This correction will provide more flexibility for employers in providing first-aid kits that incorporate the latest medical technology and innovations.

Need for Correction

As discussed above, the final rule on Logging Operations published on Oct. 12, 1994 (59 FR 51672) contains errors which may prove to be misleading and are in need of clarification.

Under 5 U.S.C. 553, OSHA finds that there is good cause for making these amendments and corrections to the final logging standard effective upon publication in the **Federal Register**. These amendments represent minor changes and clarifications to the final rule and they do not increase regulatory burdens over those imposed by the final logging standard.

List of Subjects in 29 CFR Part 1910

Chain saw, Forestry, Harvesting, Incorporation by reference, Logging, Occupational safety and health, Pulpwood timber, Safety, Training.

Accordingly, 29 CFR Part 1910 is revised by making the following corrections and technical amendments:

PART 1910—[AMENDED]

1. The authority citation for subpart R of part 1910 continues to read:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.266, 1910.267, 1910.268, 1910.269, 1910.272, 1910.274 and 1910.275 also issued under 29 CFR Part 1911.

2. In paragraph (c) of 1910.266, the definitions of ''logging operations,'' ''machine,'' and ''vehicle'' are revised to read:

§ 1910.266 Logging Operations.

* * * * *

(c) * * *

Logging operations. Operations associated with felling and moving trees and logs from the stump to the point of delivery, such as, but not limited to, marking danger trees and trees/logs to be cut to length, felling, limbing, bucking, debarking, chipping, yarding, loading, unloading, storing, and transporting machines, equipment and personnel to, from and between logging sites.

* * * * *

Machine. A piece of stationary or mobile equipment having a self-contained powerplant, that is operated off-road and used for the movement of material. Machines include, but are not limited to, tractors, skidders, front-end loaders, scrapers, graders, bulldozers, swing yarders, log stackers, log loaders, and mechanical felling devices, such as tree shears and feller-bunchers. Machines do not include airplanes or aircraft (e.g., helicopters).

* * * * *

Vehicle. A car, bus, truck, trailer or semi-trailer owned, leased or rented by the employer that is used for transportation of employees or movement of material.

* * * * *

§ 1910.266 [Amended]

3. Section 1910.266 is amended by revising paragraph (d)(1)(iii); the first sentence of paragraph (d)(1)(iv); the first sentence of paragraph (d)(1)(v); paragraph (d)(1)(vii); the first sentence of paragraph (d)(2)(i); and paragraphs (d)(2)(iii), (d)(5), (d)(6)(iii), (d)(9)(iii), and (d)(9)(iv) to read:

(d) * * *

(1) * * *

(iii) The employer shall provide, at no cost to the employee, and assure that each employee handling wire rope wears, hand protection which provides adequate protection from puncture wounds, cuts and lacerations.

(iv) The employer shall provide, at no cost to the employee, and assure that each employee who operates a chain saw wears leg protection constructed with cut-resistant material, such as ballistic nylon. * * *

(v) The employer shall assure that each employee wears foot protection, such as heavy-duty logging boots that are waterproof or water repellant, cover and provide support to the ankle. The employer shall assure that each employee who operates a chain saw wears foot protection that is constructed with cut-resistant material which will protect the employee against contact with a running chain saw. * * *

* * * * *

(vii) The employer shall provide, at no cost to the employee, and assure that each employee wears the following:

(A) Eye protection meeting the requirements of subpart I of Part 1910 where there is potential for eye injury due to falling or flying objects; and

(B) Face protection meeting the requirements of subpart I of Part 1910 where there is potential for facial injury such as, but not limited to, operating a chipper. Logger-type mesh screens may be worn by employees performing chain-saw operations and yarding.

Note to paragraph (d)(1)(vii): The employee does not have to wear a separate eye protection device where face protection covering both the eyes and face is worn.

(2) * * *

(i) The employer shall provide first-aid kits at each work site where trees are being cut (e.g., felling, bucking, limbing), at each active landing, and on each employee transport vehicle. * * *

* * * * *

(iii) The employer also may have the number and content of first-aid kits reviewed and approved annually by a health care provider.

* * * * *

(5) *Environmental conditions.* All work shall terminate and each employee shall move to a place of safety when environmental conditions, such as but not limited to, electrical storms, strong winds which may affect the fall of a tree, heavy rain or snow, extreme cold, dense fog, fires, mudslides, and darkness, create a hazard for the employee in the performance of the job.

(6) * * *

(iii) Each employee performing a logging operation at a logging work site shall work in a position or location that is within visual or audible contact with another employee.

* * * * *

(9) * * *

(iii) Each machine, vehicle, and portable powered tool shall be shut off during fueling. Diesel-powered machines and vehicles may be fueled while they are at idle, provided that continued operation is intended and that the employer follows safe fueling and operating procedures.

(iv) Flammable and combustible liquids, including chain-saw and diesel

fuel, may be used to start a fire, provided the employer assures that in the particular situation its use does not create a hazard for an employee.

* * * * *

4. Section 1910.266 is amended by revising paragraphs (e)(2)(iv), (e)(2)(vi) and (e)(2)(xiii) to read:

(e) * * *

(2) * * *

(iv) The chain saw shall be fueled at least 10 feet (3 m) from any open flame or other source of ignition.

* * * * *

(vi) The chain saw shall be started on the ground or where otherwise firmly supported. Drop starting a chain saw is prohibited.

* * * * *

(xiii) The chain saw shall be shut off or the throttle released before the feller starts his retreat.

* * * * *

5. Section 1910.266 is amended by revising paragraphs (f)(2)(iv), (f)(2)(x) and (f)(2)(xi); the first sentence of (f)(3)(i); by removing the first sentence of (f)(3)(ii); redesignating the remaining text as paragraph (f)(3)(ii)(C) and adding paragraphs (f)(3)(ii) (A) and (B); and by revising paragraphs (f)(3)(vii), (f)(3)(viii) and (f)(7) (i) and (ii) to read:

(f) * * *

(2) * * *

(iv) To maintain stability, the machine must be operated within the limitations imposed by the manufacturer as described in the operating and maintenance instructions for that machine.

* * * * *

(x) Before the operator leaves the operator's station of a machine, it shall be secured as follows:

(A) The parking brake or brake locks shall be applied;

(B) The transmission shall be placed in the manufacturer's specified park position; and

(C) Each moving element such as, but not limited to blades, buckets, saws and shears, shall be lowered to the ground or otherwise secured.

(xi) If a hydraulic or pneumatic storage device can move the moving elements such as, but not limited to, blades, buckets, saws and shears, after the machine is shut down, the pressure or stored energy from the element shall be discharged as specified by the manufacturer.

* * * * *

(3) * * *

(i) Each tractor, skidder, swing yarder, log stacker, log loader and mechanical felling device, such as tree shears or feller-buncher, placed into initial service after February 9, 1995, shall be equipped with falling object protective structure (FOPS) and/or rollover protective structure (ROPS). * * *

(ii) (A) ROPS shall be tested, installed, and maintained in serviceable condition.

(B) Each machine manufactured after August 1, 1996, shall have ROPS tested, installed, and maintained in accordance with the Society of Automotive Engineers SAE J1040, April 1988, ''Performance Criteria for Rollover Protective Structures (ROPS) for Construction, Earthmoving, Forestry, and Mining Machines.'' * * *

* * * * *

(vii) Each machine manufactured after August 1, 1996, shall have a cab that is fully enclosed with mesh material with openings no greater than 2 inches (5.08 cm) at its least dimension. The cab may be enclosed with other material(s) where the employer demonstrates such material(s) provides equivalent protection and visibility. Exception: Equivalent visibility is not required for the lower portion of the cab where there are control panels or similar obstructions in the cab, or where visibility is not necessary for safe operation of the machine.

(viii) Each machine manufactured on or before August 1, 1996 shall have a cab which meets the requirements specified in paragraph (f)(3)(vii) or a protective canopy for the operator which meets the following requirements:

(A) The protective canopy shall be constructed to protect the operator from injury due to falling trees, limbs, saplings or branches which might enter the compartment side areas and from snapping winch lines or other objects;

(B) The lower portion of the cab shall be fully enclosed with solid material, except at entrances, to prevent the operator from being injured from obstacles entering the cab;

(C) The upper rear portion of the cab shall be fully enclosed with open mesh material with openings of such size as to reject the entrance of an object larger than 2 inches in diameter. It shall provide maximum rearward visibility; and

(D) Open mesh shall be extended forward as far as possible from the rear corners of the cab sides so as to give the maximum protection against obstacles, branches, etc., entering the cab area.

* * * * *

(7) * * *

(i) Service brakes shall be sufficient to stop and hold each machine and its rated load capacity on the slopes over which it is being operated.

(ii) Each machine placed into initial service on or after September 8, 1995 shall also be equipped with: back-up or secondary brakes that are capable of stopping the machine regardless of the direction of travel or whether the engine is running; and parking brakes that are capable of continuously holding a stopped machine stationary.

6. Section 1910.266 is amended by revising paragraphs (g)(1) and (g)(2) to read:

(g) * * *

(1) The employer shall assure that each vehicle used to perform any logging operation is maintained in serviceable condition.

(2) The employer shall assure that each vehicle used to perform any logging operation is inspected before initial use during each workshift. Defects or damage shall be repaired or the unserviceable vehicle shall be replaced before work is commenced.

* * * * *

7. Section 1910.266 is amended by revising paragraphs (h)(1)(iii), (h)(1)(ix), (h)(2)(i), (h)(2)(vi), and (h)(2)(vii); the heading of paragraph (h)(3); and paragraphs (h)(3)(i), (h)(5)(v), (h)(5)(viii), and (h)(6)(ii) to read:

(h) * * *

(1) * * *

(iii) While manual felling is in progress, no yarding machine shall be operated within two tree lengths of trees being manually felled. Exception: This provision does not apply to yarding machines performing tree pulling operations.

* * * * *

(ix) Domino felling of trees is prohibited.

Note to paragraph (h)(1)(ix): The definition of domino felling does not include the felling of a single danger tree by felling another single tree into it.

(2) * * *

(i) Before felling is started, the feller shall plan and clear a retreat path. The retreat path shall extend diagonally away from the expected felling line unless the employer demonstrates that such a retreat path poses a greater hazard than an alternate path. Once the backcut has been made the feller shall immediately move a safe distance away from the tree on the retreat path.

* * * * *

(vi) A backcut shall be made in each tree being felled. The backcut shall leave sufficient hinge wood to hold the tree to the stump during most of its fall so that the hinge is able to guide the tree's fall in the intended direction.

(vii) The backcut shall be above the level of the horizontal facecut in order to provide an adequate platform to

prevent kickback. Exception: The backcut may be at or below the horizontal facecut in tree pulling operations.

Note to paragraph (h)(2)(vii): This requirement does not apply to open face felling where two angled facecuts rather than a horizontal facecut are used.

(3) *Limbing and bucking.* (i) Limbing and bucking on any slope where rolling or sliding of trees or logs is reasonably foreseeable shall be done on the uphill side of each tree or log.

* * * * *

(5) * * *

(v) No yarding line shall be moved unless the yarding machine operator has clearly received and understood the signal to do so. When in doubt, the yarding machine operator shall repeat the signal and wait for a confirming signal before moving any line.

* * * * *

(viii) The yarding machine or vehicle, including its load, shall be operated with safe clearance from all obstructions that may create a hazard for an employee.

* * * * *

(6) * * *

(ii) Only the loading or unloading machine operator and other personnel the employer demonstrates are essential shall be in the loading or unloading work area during this operation.

* * * * *

8. Section 1910.266 is amended by removing paragraph (i)(7)(ii) and redesignating paragraph (i)(7)(iii) as paragraph (i)(7)(ii).

9. Section 1910.266 is amended by revising Appendix A to read:

Appendix A to 1910.266—First-Aid Kits (Mandatory)

The following list sets forth the minimally acceptable number and type of first-aid supplies for first-aid kits required under paragraph (d)(2) of the logging standard. The contents of the first-aid kit listed should be adequate for small work sites, consisting of approximately two to three employees. When larger operations or multiple operations are being conducted at the same location, additional first-aid kits should be provided at the work site or additional quantities of supplies should be included in the first-aid kits:

1. Gauze pads (at least 4×4 inches).
2. Two large gauze pads (at least 8×10 inches).
3. Box adhesive bandages (band-aids).
4. One package gauze roller bandage at least 2 inches wide.
5. Two triangular bandages.
6. Wound cleaning agent such as sealed moistened towelettes.
7. Scissors.
8. At least one blanket.
9. Tweezers.
10. Adhesive tape.
11. Latex gloves.
12. Resuscitation equipment such as resuscitation bag, airway, or pocket mask.
13. Two elastic wraps.
14. Splint.
15. Directions for requesting emergency assistance.

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 5th day of September, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–22386 Filed 9–7–95; 8:45 am]

BILLING CODE 4510–26–P

Reader Aids

Federal Register

Vol. 60, No. 174

Friday, September 8, 1995

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	**202–523–5227**
Public inspection announcement line	**523–5215**

Laws

Public Laws Update Services (numbers, dates, etc.)	**523–6641**
For additional information	**523–5227**

Presidential Documents

Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**

Other Services

Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
TDD for the hearing impaired	**523–5229**

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202–275–0920**

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

45647–46016.....1
46017–46212.....5
46213–46496.....6
46497–46748.....7
46749–47038.....8

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

5 CFR

304.....45647
353.....45670
532.....46213
591.....46749
870.....45670
890.....45670
1320.....45776, 46148

Proposed Rules:

300.....46780

7 CFR

51.....46976
271.....45990
272.....45990
273.....45990
945.....46017
998.....46750
1137.....46214
1942.....46215
1951.....46753

Proposed Rules:

1260.....46781

8 CFR

329.....45658

9 CFR

Proposed Rules:

1.....46783
3.....46783

10 CFR

73.....46497

Proposed Rules:

30.....46784
40.....46784
70.....46784

12 CFR

3.....46170
208.....46170
225.....46170
325.....46170

Proposed Rules:

23.....46246

13 CFR

Proposed Rules:

108.....46789

14 CFR

39 .....46216, 46758, 46760, 46761, 46763, 46765
97.....46218
399.....46018

Proposed Rules:

39 .....45683, 46541, 46542, 46544, 46790, 46792
71.....46547

15 CFR

275.....45659

16 CFR

600.....45659

17 CFR

201.....46498

19 CFR

10.....46188, 46334
12.....46188, 46334
24.....46334
102.....46188
123.....46334
134.....46334
162.....46334
174.....46334
177.....46334
178.....46188
181.....46334
191.....46334
206.....46500

21 CFR

Proposed Rules:

312.....46794
314.....46794
862.....45685
864.....46718
866.....45685
868.....45685, 46718
870.....45685, 46718
872.....45685, 46718
874.....45685
876.....45685, 46718
878.....45685
880.....45685, 46718
882.....45685, 46718
884.....45685, 46718
886.....45685
888.....45685, 46718
890.....45685, 46718
892.....45685
895.....46251
898.....46251

24 CFR

882.....45661
887.....45661
982.....45661
983.....45661

25 CFR

Proposed Rules:

63.....45982

26 CFR

1.....45661, 46500
4.....46500
602.....46500

Proposed Rules:

1.....46548

28 CFR

0.....46018

541 46484
548 46484

29 CFR

552 46766
801 46530
1601 46219
1910 47022
Proposed Rules:
4 46553
5 46553
552 46797

30 CFR

Proposed Rules:
Ch. II 46556

31 CFR

Proposed Rules:
103 46556

32 CFR

92 46019

33 CFR

100 45668
110 45776
165 ....45669, 45670
Proposed Rules:
117 46069

34 CFR

74 46492
75 46492
76 46492
81 46492
Proposed Rules:
75 46004

36 CFR

7 46562
223 46890
Proposed Rules:
1206 46798

38 CFR

3 46531
21 46533

40 CFR

9 45948
52 ....46020, 46021, 46024, 46025, 46029, 46220, 46222, 46535, 46768
61 46206
63 45948
70 ....45671, 46771
280 46691
281 46691
Proposed Rules:
52 ....46070, 46071, 46252, 46802
70 ....45685, 46072
372 46076

41 CFR

Proposed Rules:
50–201 46553
50–206 46553

42 CFR

412 45778
413 45778
417 ....45673, 46228
424 45778
485 45778
489 45778

44 CFR

64 ....46030, 46037
65 ....46038, 46040, 46042, 46043
67 46044
Proposed Rules:
67 ....46079, 46085

45 CFR

670 46234
1355 46887

46 CFR

552 46047
Proposed Rules:
40 46087
154 46087

47 CFR

64 46537
69 46537
73 46063
90 46537
Proposed Rules:
25 46252
36 46803
73 ....46562, 46563
76 46805
90 ....46564, 46566

48 CFR

2401 46152
2402 46152
2404 46152
2405 46152
2406 46152
2413 46152
2415 46152
2416 46152
2419 46152
2426 46152
2428 46152
2429 46152
2432 46152
2437 46152
2452 46152
2453 46152
Proposed Rules:
52 46259
225 46805

49 CFR

393 46236
571 46064

50 CFR

20 46012
301 46774
630 46775
649 45682
663 46538
672 46067
Proposed Rules:
10 46087
13 46087
17 ....46087, 46568, 46569, 46571
625 46105
649 45690
650 45690
651 45691
670 46806
672 ....46572, 46936
675 ....46572, 46811, 46936

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 535/P.L. 104–23

Corning National Fish Hatchery Conveyance Act (Sept. 6, 1995; 109 Stat. 261; 1 page)

H.R. 584/P.L. 104–24

To direct the Secretary of the Interior to convey a fish hatchery to the State of Iowa. (Sept. 6, 1995; 109 Stat. 262; 1 page)

H.R. 614/P.L. 104–25

To direct the Secretary of the Interior to convey to the State of Minnesota the New London National Fish Hatchery production facility. (Sept. 6, 1995; 109 Stat. 263; 1 page)

H.R. 1225/P.L. 104–26

Court Reporter Fair Labor Amendments of 1995 (Sept. 6, 1995; 109 Stat. 264; 2 pages)

H.R. 2077/P.L. 104–27

To designate the United States Post Office building located at 33 College Avenue in Waterville, Maine, as the ''George J. Mitchell Post Office Building''. (Sept. 6, 1995; 109 Stat. 266; 1 page)

H.R. 2108/P.L. 104–28

District of Columbia Convention Center and Sports Arena Authorization Act of 1995 (Sept. 6, 1995; 109 Stat. 267; 4 pages)

Last List August 18, 1995