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Wednesday
August 7, 1996

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AG88

Pay Under the General Schedule; Locality Pay Areas for 1997

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to remove three metropolitan areas from the ''Rest of U.S.'' locality pay area and establish three new locality pay areas in January 1997 corresponding to these metropolitan areas. The three metropolitan areas affected by these final regulations are: Milwaukee-Racine, WI; Minneapolis-St. Paul, MN–WI; and Pittsburgh, PA. The President's Pay Agent made the final determination on the boundaries of the new locality pay areas after considering the recommendations of the Federal Salary Council and public comments.

EFFECTIVE DATE: The regulations are effective on January 1, 1997, and are applicable on the first day of the first pay period beginning on or after January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jeanne Jacobson, (202) 606–2858 or FAX: (202) 606–0824.

SUPPLEMENTARY INFORMATION: On October 16, 1995, the Office of Personnel Management (OPM) published proposed regulations to remove three metropolitan areas from the ''Rest of U.S.'' locality pay area and establish three new locality pay areas in January 1997 corresponding to these metropolitan areas based on the recommendations of the Federal Salary Council. (See 60 FR 53545.) After considering the views of the Federal Salary Council and comments from agencies, organizations, and individuals, the President's Pay Agent (consisting of the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of OPM) decided to adopt the Federal Salary Council's recommendations on the three new locality pay areas. This determination was reflected in the Pay Agent's November 29, 1995, report to the President. These final regulations list the locality pay areas for 1997, including the three new locality pay areas corresponding to the following Metropolitan Statistical Areas (MSA's) or Consolidated Metropolitan Statistical Areas (CMSA's), as defined by OMB: (1) Milwaukee-Racine, WI; (2) Minneapolis-St. Paul, MN–WI; and (3) Pittsburgh, PA.

The definitions of the MSA's and CMSA's that comprise the locality pay areas are found in OMB Bulletin No. 96–08, June 28, 1996. Based on these definitions, the three new locality pay areas will be composed of the following geographic areas:

(1) Milwaukee-Racine, WI—includes Milwaukee, Ozaukee, Washington, Waukesha, and Racine Counties;

(2) Minneapolis-St. Paul, MN–WI—includes, in Minnesota, Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright Counties and, in Wisconsin, Pierce and St. Croix Counties; and

(3) Pittsburgh, PA—includes Allegheny, Beaver, Butler, Fayette, Washington, and Westmoreland Counties.

The boundaries of locality pay areas are subject to change if the boundaries of the corresponding MSA's and CMSA's change, as determined by OMB.

OPM received comments on the boundaries of the proposed locality pay areas from nine agency field offices, four employee organizations, and two individuals. Most commenters fully supported the boundaries of the new locality pay areas. However, three commenters requested that certain additional areas in the ''Rest of U.S.'' locality pay area be included in the Minneapolis-St. Paul, MN–WI, locality pay area. These areas are Waseca County, MN; the city of Rochester, MN; and Pine County, MN. However, as explained below, none of these locations meets all of the criteria set forth by the Federal Salary Council for removal from the ''Rest of U.S.'' locality pay area and inclusion as an ''area of application'' in the Minneapolis-St. Paul locality pay area.

Prior to the implementation of locality pay in 1994, the President's Pay Agent adopted the Federal Salary Council's recommendation that the boundaries of locality pay areas follow the boundaries of MSA's and CMSA's, as defined by OMB. The Federal Salary Council also recommended that certain areas outside the boundaries of an MSA or CMSA (i.e., ''areas of application'') be included in the locality pay area if they meet certain criteria.

In order for the Federal Safety Council to recommend an area as a county-wide area of application for the January 1997 locality payments, the affected county must—

1. Be contiguous to a pay locality;
2. Contain at least 2,000 GS–GM employees;
3. Have a significant level of urbanization, based on 1990 Census data. A 'significant level of urbanization'' is defined as a population density of more than 200 per square mile or at least 90 percent of the population in urbanized areas; and
4. Demonstrate some economic linkage with the pay locality, defined as commuting at a level of 5 percent or more into or from the areas in question. The areas in question are the contiguous county under consideration and the central counties (or in the case of New England, the central cores) identified by the Census Bureau for the process of defining the CMSA's and MSA's involved.

In the case of Waseca County, criterion 1—that the county be contiguous to the Minneapolis-St. Paul, MN–WI, locality pay area—is not met.

With respect to the city of Rochester, MN, under established policies, areas of application must comprise entire counties (except where a Federal facility crosses pay area boundaries). Even if individual cities could be considered, Rochester would not meet criterion 1—that an area of application be contiguous to a pay locality. Nor does Olmstead County, MN, meet this criterion.

In the case of Pine County, criterion 2—that it contain at least 2,000 GS–GM employees—and criterion 3—that it have a significant level of urbanization—are not met.

Therefore, because the FSC's criteria for ''areas of application'' were not met

none of the those areas in question will be part of the Minneapolis-St. Paul, MN–WI, locality pay area.

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

In certify that these regulations will not have a significant impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management,

James B. King,

Director.

Accordingly, OPM is amending part 531 of title 5, Code of Federal Regulations, as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(b)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

Subpart F—Locality-Based Comparability Payments

2. In § 531.603, paragraph (b) is revised to read as follows:

§ 531.603 Locality pay areas.

* * * * *

(b) The following are locality pay areas for the purpose of this subpart:

(1) Atlanta, GA—consisting of the Atlanta, GA MSA;

(2) Boston-Worcester-Lawrence, MA–NH–ME–CT—consisting of the Boston-Worcester-Lawrence, MA–NH–ME–CT CMSA;

(3) Chicago-Gary-Kenosha, IL–IN–WI—consisting of the Chicago-Gary-Kenosha, IL–IN–WI CMSA;

(4) Cincinnati-Hamilton, OH–KY–IN—consisting of the Cincinnati-Hamilton, OH–KY–IN CMSA;

(5) Cleveland-Akron, OH—consisting of the Cleveland-Akron, OH CMSA;

(6) Columbus, OH—consisting of the Columbus, OH MSA;

(7) Dallas-Fort Worth, TX—consisting of the Dallas-Fort Worth, TX CMSA;

(8) Dayton-Springfield, OH—consisting of the Dayton-Springfield, OH MSA;

(9) Denver-Boulder-Greeley, CO—consisting of the Denver-Boulder-Greeley, CO CMSA;

(10) Detroit-Ann Arbor-Flint, MI—consisting of the Detroit-Ann Arbor-Flint, MI CMSA;

(11) Houston-Galveston-Brazoria, TX—consisting of the Houston-Galveston-Brazoria, TX CMSA;

(12) Huntsville, AL—consisting of the Huntsville, AL MSA;

(13) Indianapolis, IN—consisting of the Indianapolis, IN MSA;

(14) Kansas City, MO–KS—consisting of the Kansas City, MO–KS MSA;

(15) Los Angeles-Riverside-Orange County, CA—consisting of the Los Angeles-Riverside-Orange County, CA CMSA, plus Santa Barbara County, CA, and that portion of Edwards Air Force Base, CA, not located within the Los Angeles-Riverside-Orange County, CA CMSA;

(16) Miami-Fort Lauderdale, FL—consisting of the Miami-Fort Lauderdale, FL CMSA;

(17) Milwaukee-Racine, WI—consisting of the Milwaukee-Racine, WI CMSA;

(18) Minneapolis-St. Paul, MN–WI—consisting of the Minneapolis-St. Paul, MN–WI MSA;

(19) New York-Northern New Jersey-Long Island, NY–NJ–CT–PA—consisting of the New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA;

(20) Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD—consisting of the Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD CMSA;

(21) Pittsburg, PA—consisting of the Pittsburgh, PA MSA;

(22) Portland-Salem, OR–WA—consisting of the Portland-Salem, OR–WA CMSA;

(23) Richmond-Petersburg, VA—consisting of the Richmond-Petersburg, VA MSA;

(24) Sacramento-Yolo, CA—consisting of the Sacramento-Yolo, CA CMSA;

(25) St. Louis, MO–IL—consisting of the St. Louis, MO–IL MSA;

(26) San Diego, CA—consisting of the San Diego, CA MSA;

(27) San Francisco-Oakland-San Jose, CA—consisting of the San Francisco-Oakland-San Jose, CA CMSA;

(28) Seattle-Tacoma-Bremerton, WA—consisting of the Seattle-Tacoma-Bremerton, WA CMSA;

(29) Washington-Baltimore, DC–MD–VA–WV—consisting of the Washington-Baltimore, DC–MD–VA–WV CMSA, plus St. Mary's County, MD; and

(30) Rest of U.S.—consisting of those portions of the continental United States not located within another locality pay area.

[FR Doc. 96–20092 Filed 8–6–96; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RINs 3209–AA04, 3209–AA15

Further Grace Period Extension for Certain Existing Agency Standards of Conduct

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendment.

SUMMARY: The Office of Government Ethics is granting one further grandfathering grace period extension of just under three months for certain existing executive agency standards of conduct, dealing with regulatory financial interest prohibitions and prior approval for outside employment and activities, which have been temporarily preserved. This further action (three previous extensions have been granted) is necessary because some agencies still have not been able to issue, with OGE concurrence and co-signature, interim or final supplemental regulations during the prior grace periods. This further extension will help ensure that agencies which in conjunction with OGE are actively working on draft supplementals will have adequate time to issue, if they so desire, successor supplemental regulatory provisions to replace grandfathered financial interest prohibitions and prior approval requirements.

EFFECTIVE DATE: August 7, 1996.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Office of Government Ethics; telephone: 202–208–8000, extension 1110; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is granting, under the executive branch standards of ethical conduct, an extension of time until November 1, 1996 for certain

agencies' existing conduct standards dealing with regulatory prohibited financial interests and prior approval for outside employment and activities. When OGE published its ethical conduct standards for executive branch employees in the Federal Register on August 7, 1992 (as now codified at 5 CFR part 2635), it provided that most existing individual agency standards of conduct would be superseded once the executive branchwide standards took effect on February 3, 1993. However, OGE also provided, by means of notes following 5 CFR 2635.403(a) and 2635.803, that any existing agency standards dealing with the two types of restrictions noted above would be preserved for one year, until February 3, 1994, or until the agency concerned issued (with OGE concurrence and co-signature) a supplemental regulation, whichever occurred first. See 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583 and 60 FR 51667. In February 1994, February 1995 and December 1995, OGE extended that original grace period for a total of some two and a half years, until August 7, 1996 (or until agency issuance of a supplemental regulation), for those executive branch departments and agencies that had not yet been able to issue final or interim final successor rules. See 59 FR 4779–4780 (February 2, 1994), 60 FR 6390–6391 (February 2, 1995) and 60 FR 66857–66858 (December 27, 1995), as well as appendixes A, B and C which were added to part 2635.

Through OGE's liaison efforts, the Office of the Federal Register (OFR) has assigned new chapters, including parts, at the end of title 5 of the Code of Federal Regulations to accommodate agencies' future supplemental standards regulations (on these two and other appropriate subject areas), as well as any supplemental agency regulations under OGE's executive branchwide financial disclosure provisions at 5 CFR part 2634. Almost 60 agencies have had such chapters reserved, including those which have by now already issued, with OGE concurrence and co-signature, interim final or final supplemental ethics regulations. However, some agencies have still not issued their planned supplemental standards regulations in interim or final form.

The Office of Government Ethics has therefore determined to permit a further preservation of existing agency regulatory standards of conduct provisions described above until November 1, 1996 (or until issuance by each agency listed of its supplemental regulation, whichever comes first), for those agencies which are actively working in conjunction with OGE on draft supplemental standards regulations. The agencies subject to this further grandfathering grace period extension, as provided in the notes (which are hereby being further amended) following 5 CFR 2635.403(a) and 2635.803, are enumerated at new appendix D which OGE is adding to part 2635. The agencies are listed in the order of the assignment of their chapter numbers at the end of 5 CFR. Agencies not listed either have not expressed an interest in issuing supplemental agency ethics regulations, have indicated to OGE that they are no longer interested in a further grace period extension, or have already issued final or interim final supplemental standards. The agencies listed should take advantage of this final further extension to complete the issuance, with OGE concurrence and co-signature, of replacement regulations for grandfathered provisions which otherwise will be superseded this fall at the end of this extension.

The Office of Government Ethics does note that it is not by this rulemaking, which only affects grandfathered provisions, setting a deadline for agencies to submit supplemental ethics regulations. Agencies can, with OGE concurrence and co-signature, issue supplementals at any time. Further, they can, at any time, have new title 5 CFR chapters reserved through OGE and OFR for such purpose if they have not already done so. Moreover, if an agency's prohibited financial interest (and/or prior approval) restrictions are based on specific authority independent of 5 CFR part 2635, they are not superseded by the 5 CFR part 2635 executive branchwide standards. If any related regulatory provisions were located in its old agency standards of conduct, the agency concerned could, after consultation with OGE, retain them in their existing place in the agency's own CFR title and chapter or move the provisions to another appropriate part of its regulations. See 5 CFR 2635.105(c)(3).

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Deputy Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to this further grace period extension. The notice and delayed effective date are being waived because this rulemaking concerns a matter of agency organization, practice and procedure. Furthermore, it is in the public interest that those agencies concerned have adequate time to promulgate successor provisions to their existing standards of conduct regulations in these two areas without a lapse in necessary regulatory restrictions.

Executive Order 12866

In promulgating this grace period extension technical amendment, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This amendment has not been reviewed by the Office of Management and Budget under that Executive order, as it is not deemed ''significant'' thereunder.

Regulatory Flexibility Act

As Deputy Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects executive branch departments and agencies and their employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rulemaking does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2635

Conflict of interests, Government employees.

Approved: August 1st, 1996.

F. Gary Davis,

Deputy Director, Office of Government Ethics.

Accordingly, pursuant to its authority under title IV of the Ethics in Government Act and Executive Order 12674/12731, the Office of Government Ethics is amending 5 CFR part 2635 as follows:

PART 2635—[AMENDED]

1. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. The notes following both §§ 2635.403(a) and 2635.803 are amended by adding a new sentence at the end of each to read as follows:

Note: * * * Provided still further, that for those agencies listed in appendix D to this part, the grace period for any such existing

provisions shall be further extended until November 1, 1996 or until issuance by each individual agency concerned of a supplemental regulation, whichever occurs first.

3. A new appendix D is added at the end of part 2635 to read as follows:

Appendix D to Part 2635—Agencies Entitled to Another Further (Fourth) Grace Period Extension Pursuant to Notes Following §§ 2635.403(a) and 2635.803

1. Department of the Treasury
2. Federal Energy Regulatory Commission
3. Department of the Interior
4. Department of Commerce
5. Department of Justice
6. Federal Communications Commission
7. Securities and Exchange Commission
8. United States Information Agency
9. Occupational Safety and Health Review Commission
10. Department of State
11. Department of Labor
12. National Science Foundation
13. Small Business Administration
14. Department of Transportation
15. National Transportation Safety Board
16. General Services Administration
17. Board of Governors of the Federal Reserve System
18. National Labor Relations Board
19. Peace Corps
20. Consumer Product Safety Commission
21. Executive Office of the President
22. Department of Agriculture
23. Agency for International Development
24. Social Security Administration

[FR Doc. 96–19971 Filed 8–6–96; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations; Reinsurance Agreement—Standards for Approval

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends its General Administrative Regulations by revising the Disputes clause. The intended effect of this rule is to provide reinsured companies with an informal reconsideration process through an administrative officer of FCIC and the right to appeal the administrative officer's determination to the Board of Contract Appeals.

EFFECTIVE DATE: August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, (202) 720–2832.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Departmental Regulation 1512–1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order 12866 and Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 31, 1999.

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

Paperwork Reduction Act of 1995

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Unfunded Mandates Reform Act of 1995.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments of the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act Analysis

This regulation will not have a significant impact on a substantial number of small entities. The amount of work required of the insurance companies should not increase because this action only changes the forum which determines the validity of decisions rendered by the agency. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt State and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions contained in these regulations and the appeal provisions promulgated by the Board of Contract Appeals, 7 CFR part 24, subtitle A, must be exhausted before action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance

Review program to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

As a result of the Departmental reorganization mandated by the Department of Agriculture Reorganization Act of 1994, FCIC must amend its dispute provisions located at 7 CFR 400.169 to provide reinsured companies with a mechanism to request reconsideration of appeal of adverse decisions determined by FCIC.

On May 1, 1995, FCIC published an interim rule in the Federal Register at 60 FR 21035 to amend the General Crop Insurance Regulations, Subpart L, Reinsurance Agreement; Standards for Approval, by revising the disputes clause to provide reinsured companies with an informal appeal process through the FCIC, and a formal appeal process through the United States Department of Agriculture Board of Contract Appeals (BCA), for the purpose of resolving disputes between the FCIC and reinsured companies on Standard Reinsurance Agreement (SRA) issues. Following publication of that interim rule, the public was afforded 60 days to submit written comments, data, and opinions. On August 7, 1995, FCIC extended the comment period for these regulations to August 18, 1995 (60 FR 40055). Three comments, two from private law firms and one from a trade association were received in response to the requests for comment on the interim rule.

Comment: All 3 comments questioned the jurisdiction of the United States Department of Agriculture BCA over SRA issues in dispute since the SRA is not a typical Federal procurement contract.

Response: The BCA continues to function as the agency board pursuant to the Contract Disputes Act of 1978 (Act), *and* as the agency board pursuant to jurisdiction outside the Act as set forth in 7 CFR § 24.4. The BCA's jurisdiction is not, and never has been, limited to procurement disputes. Section 24.4 has been expanded to specifically cover appeals of final administrative determinations of FCIC pertaining to the SRAs under 7 CFR § 400.169(d). Since BCA has jurisdiction over these issues, the disputes are not ''adverse decisions'' subject to appeal before the National Appeals Division according to 7 U.S.C. § 6991. They also are specifically excluded from the scope of Farm Service Agency informal appeal regulations published at 7 CFR part 780. Disputes involving SRAs raise factual and legal questions of a contractual nature which fall within the express expertise of the BCA. The rules of procedure for these appeals are the same as for all others under 7 CFR part 24. There is no longer a distinction between ''statutory'' and ''nonstatutory'' appeals.

Comment: All 3 comments expressed concern with respect to the BCA's jurisdiction to hear appeals of final determinations rendered under § 400.169.

Response: The BCA amended its jurisdictional provisions on November 7, 1995 (60 FR 56206) to provide the BCA with jurisdiction over final administrative determinations of the FCIC pertaining to SRAs under 7 CFR § 400.169(d). That is separate from its jurisdiction to hear contract disputes under the Contract Disputes Act. Therefore, no change will be made.

Comment: Two commentors questioned the nonappealability of FCIC decisions rendered under bulletins and directives and complained that FCIC was limiting the companies' due process rights by limiting the types of disputes appealable.

Response: The interim rule does not limit the companies' due process rights or their right to appeal any decision of FCIC based on any bulletin or directive that affects, interprets, explains or restricts any term of the SRA. FCIC has the right to limit the appeal of any decision that is solely within its discretion and not required under the SRA. Bulletins or directives that *do not* affect, interpret, explain or restrict any term of the SRA include, but are not limited to, those that provide changes in crop insurance policies before the contract change date, the addition of new crop insurance policies or programs, granting relief from requirements or sanctions if such requirements or sanctions are not required by the SRA, and requiring companies to take actions to protect the integrity of the program, even if such action may cause the company to incur additional costs, provided such requirement is implemented before the start of the reinsurance year. No change will be made to the rule.

Comment: All three commentors expressed concern with respect to the propriety of permitting the Director of Compliance and the Director of Insurance Services to render final administrative decisions.

Response: Section 400.169 provides an informal mechanism for companies to challenge decisions rendered by FCIC. Reconsideration of these decisions allows the division that rendered the decision the opportunity to correct any error prior to an appeal to the BCA. The Directors of Compliance and Insurance Services are persons with the most knowledge of the programs they administer and are most qualified to render final determinations. Therefore, there is no need to amend the rule to have the Deputy Manager make final determinations.

Comment: One commentor questioned whether a FCIC decision of appealability itself should be reviewable or appealable.

Response: Nothing in this rule prohibits a company from seeking a review of a determination of nonappealability from the BCA. The issue on appeal would be limited to a determination of whether the decision of FCIC was based on a provision of the SRA, a compliance review, or a bulletin or directive which affects, interprets, explains or restricts a term of the SRA.

Comment: Two comments were received with respect to the definition of ''contracting officer.'' The commentors suggested that the term be amended to include the Directors of Insurance Services and Compliance and that these persons be given authority to settle disputes.

Response: The term ''contracting officer'' is not defined in FCIC's regulations. Further, the Manager of FCIC has the authority to designate contracting officers and provide these persons with the authority to resolve disputes between reinsured companies and FCIC. This rule provides a delegation to these Directors to resolve such disputes. Therefore, no change is necessary.

Comment: One comment suggested that the rule be amended to permit companies to bypass the BCA and go directly to the district court or the National Appeals Division (NAD).

Response: It has been determined that the BCA is the best forum to hear these appeals. Although the BCA may not be an expert with respect to the SRA, it has extensive experience in contract matters. Since NAD does not have jurisdiction to hear any matter over which the BCA has jurisdiction, the BCA acquired jurisdiction over these cases. FCIC has no authority to permit any appeal to NAD. Further, administrative appeals provide the valuable service of permitting the Department to correct any errors and, therefore, conserving judicial resources. Therefore, the rule will not be amended to permit companies to appeal directly to the Federal courts or to NAD.

Comment: One comment suggested that the rule be amended to specify the forum for an appeal of a BCA decision.

Response: An amendment to the rule is not necessary. The administrative appeals process ends with a BCA decision. The Department of Agriculture

Reorganization Act provided that once the administrative appeals process is complete, persons may bring suit. Section 506(d) of the Federal Crop Insurance Act, as amended, states that the Federal district court has exclusive original jurisdiction over any suit brought against FCIC.

The comments did not result in any change to the final rule. Therefore, the interim rule as published on May 1, 1995, at 60 FR 21035 is hereby adopted as a final rule.

List of Subjects in 7 CFR Part 400

Crop insurance.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby adopts as a final rule, the interim rule as published at 60 FR 21035 on May 1, 1995.

Signed in Washington, D.C., on August 1, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–20036 Filed 8–6–96; 8:45 am]

BILLING CODE 3410–FA–P

Agricultural Marketing Service

7 CFR Parts 922, 923, and 924

[Docket No. FV96–922–2 IFR]

Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes assessment rates for Marketing Order Nos. 922, 923 and 924 for the 1996–97 and subsequent fiscal periods. The Washington Apricot Marketing Committee, Washington Cherry Marketing Committee, and Washington-Oregon Fresh Prune Marketing Committee (Committees) are responsible for local administration of the marketing orders which regulate the handling of apricots and cherries grown in designated counties in Washington, and prunes grown in designated counties in Washington and in Umatilla County, Oregon. Authorization to assess apricot, cherry and prune handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs.

DATES: Effective on April 1, 1996. Comments received by September 6, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456, FAX (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Tershirra Yeager, Marketing Assistant, Marketing Order Administrative Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2522–S, Washington, DC 20090–6456, telephone (202) 720–5127, FAX (202) 720–5698, or Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, OR 97204, telephone (503) 326–2724, FAX (503) 326–7440. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax# (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 922 (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington; Marketing Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington; and Marketing Order No. 924 (7 CFR part 924) regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon, hereinafter referred to as the ''orders.'' The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, handlers in designated areas are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable apricots, cherries, and prunes beginning April 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handlers are afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

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

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

There are approximately 55 handlers of Washington apricots, 55 handlers of Washington sweet cherries, and 30 handlers of Washington-Oregon fresh prunes subject to regulation under the marketing orders. In addition, there are about 190 Washington apricot producers, 1,100 Washington sweet cherry producers, and 350 Washington-Oregon fresh prune producers in the respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Washington apricot,

Washington cherry, and Washington-Oregon fresh prune producers and handlers may be classified as small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The orders provide authority for the Committees, with the approval of the Department, to formulate annual budgets of expenses and collect assessments from handlers to administer the programs. The members of the Committees are producers and handlers of designated counties in Washington and in Umatilla County, Oregon. They are familiar with the Committees needs and with the costs for goods and services in their local area and are thus in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The Washington Apricot Marketing Committee met on May 16, 1996, and unanimously recommended 1996–97 expenditures of $9,385 and an assessment rate of $3.00 per ton of apricots. In comparison, last year's budgeted expenditures were $9,594.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of apricots grown in designated counties in Washington. Apricot shipments for the year are estimated at 2,300 tons which should provide $6,900 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The Washington Cherry Marketing Committee met on May 17, 1996, and unanimously recommended 1996–97 expenditures of $56,665 and assessment rate of $1.00 per ton of cherries. In comparison, last year's budgeted expenditures were $55,393.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of cherries grown in designated counties in Washington. Shipments for the year are estimated at 30,000 tons which should provide $30,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The Washington-Oregon Fresh Prune Committee met on May 29, 1996, and unanimously recommended 1996–97 expenditures of $6,645 and an assessment rate of $1.00 per ton of fresh prunes. In comparison, last year's budgeted expenditures were $10,018.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon. Fresh prune shipments for the year are estimated at 2,700 tons which should provide $2,700 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The Committees voted against having an assessment rate for their respective programs for the 1995–96 fiscal year. Major expenditures recommended by the Committees for the 1996–97 year include salary expenses, and office expenses.

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

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committees or other available information.

Although these assessment rates are effective for an indefinite period, the Committees will continue to meet prior to or during each fiscal period to consider recommendations for modification of the assessment rates. The dates and times of Committee meetings are available from the Committees or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rates are needed. Further rulemaking will be undertaken as necessary. The Committees' 1996–97 budgets and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committees and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period began on April 1, 1996, and the marketing orders require that the rates of assessment for each fiscal period apply to all assessable apricots, cherries and prunes handled during such fiscal period; (3) handlers are aware of the actions which were recommended by the Committees at public meetings and are similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 924

Plums, Prunes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 922, 923, and 924 are amended as follows:

1. The authority citation for 7 CFR parts 922, 923, and 924 continue to read as follows:

Authority: 7 U.S.C. 601–674.

Note: These sections will appear in the code of Federal Regulations.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

2. A new subpart—Assessment Rate consisting of a new § 922.235 is added to read as follows:

Subpart—Assessment Rate

§ 922.235 Assessment rate.

On and after April 1, 1996, an assessment rate of $3.00 per ton is established for the Washington Apricot Marketing Committee.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

3. A new center heading—Assessment Rate consisting of a new § 923.236 is added to read as follows:

Assessment Rate

§ 923.236 Assessment Rate.

On and after April 1, 1996, an assessment rate of $1.00 per ton is established for the Washington Cherry Marketing Committee.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

4. A new subpart—Assessment Rate consisting of a new § 924.236 is added to read as follows:

Subpart—Assessment Rate

§ 924.236 Assessment rate.

On and after April 1, 1996, an assessment rate of $1.00 per ton is established for the Washington-Oregon Fresh Prune Marketing Committee.

Dated: July 30, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–19782 Filed 8–6–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 924 and 944

[Docket No. FV95–924–1FR]

Fresh Prunes Grown in Washington and Oregon; Handling Requirement Revision; Fruits; Import Regulations; Fresh Prune Import Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the effective period of the handling regulations in effect for shipments of fresh prunes grown in specified counties of Washington and in Umatilla County, Oregon under Marketing Order No. 924 to coincide with the domestic shipping season. This final rule also establishes grade, size, and quality requirements for prune variety plums (fresh prunes) imported into the United States. The import requirements are issued pursuant to the authority in section 8e of the amended Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: This final rule becomes effective September 6, 1996.

FOR FURTHER INFORMATION CONTACT: Anne M. Dec, Marketing Order Administration Branch, AMS, USDA, P.O. Box 96456, room 2526–S, Washington, D.C. 20090–6456; telephone: (202) 720–5127; or Teresa Hutchinson, Northwest Marketing Field Office, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2725. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456; telephone (202) 720–2491, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 924 (7 CFR Part 924), as amended, regulating the handling of fresh prunes grown in Washington and Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This final rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including fresh prunes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodities.

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary will rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

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

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

There are approximately 5 handlers subject to regulation under the order and about 350 producers of Washington-Oregon fresh prunes. There are no known importers of fresh prunes. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $500,000 and small agricultural service firms, which include fresh prune handlers and importers, are defined as those whose annual receipts are less than $5,000,000. A majority of these producers and handlers may be classified as small entities.

Currently, the grade, size, and quality regulations under the order are effective throughout the entire year. This final rule changes the effective dates of these handling regulations to July 15 through September 30 each year, so that the

regulatory period more closely coincides with the marketing season for fresh prunes grown in Washington and Oregon. This period includes additional time after the last day of harvest when some lots of fruit may be kept in cold storage prior to shipment.

Consistent with section 8e of the Act, fresh prunes offered for importation into the United States are to be regulated based on the requirements under the order and during the same period of time when Washington and Oregon fresh prunes are regulated. However, fresh prunes are not, at this time, being imported into the United States.

This rule states that, from July 15 through September 30 each year, fresh prunes imported into the United States are required to meet the same minimum grade, size, and quality requirements as those for fresh prunes under the order. In addition, the reporting requirements that importers would be required to comply with are the same as those required for the importation of other commodities.

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

Most of the prune variety plums (fresh prunes) grown in the United States are produced in certain counties in Washington and in Umatilla County, Oregon. Such fresh prunes are regulated under the order which establishes minimum grade, size, and quality requirements for fresh prunes. There is no other Federal marketing order regulating plums or fresh prunes. The Washington and Oregon fresh prune industry ships throughout the United States. Between 1990 and 1994, shipments of fresh prunes from Washington and Oregon ranged from 8.4 to 22.6 million pounds.

The grade, size, and quality of fresh prunes grown in Washington and Oregon are regulated under the order. These handling requirements do not change substantially from season to season, and they have been issued on a continuing basis subject to amendment, modification, or suspension as may be determined by the Secretary. Currently, the handling regulations under the order are effective throughout the entire year. This final rule changes the effective dates of the handling regulations to July 15 through September 30 each year, so that the regulatory period more closely coincides with the marketing season for fresh prunes grown in Washington and Oregon. This period includes additional time after the last day of harvest when some lots of fruit may be kept in cold storage prior to shipment.

Fresh prunes offered for importation into the United States are regulated based on the requirements under the order and during the same period of time when Washington and Oregon fresh prunes are regulated. However, fresh prunes are not, at this time, being imported into the United States.

This rule states that, from July 15 through September 30 each year, fresh prunes imported into the United States are required to meet the same minimum grade, size, and quality requirements as those for fresh prunes under the order.

This rule adds a new § 944.700 under 7 CFR Part 944—Fruits; Import Regulations to require that fresh prunes imported into the United States, except for the Brooks and President varieties, meet modified requirements of the U.S. No. 1 grade as set forth in the United States Standards for Grades of Fresh Plums and Prunes (7 CFR Parts 51.1520 through 51.1538), and a minimum size requirement of 1¼ inches in diameter. The modifications to the U.S. No. 1 standard are as follows: (1) At least two-thirds of the surface must be purplish in color; and (2) there cannot be more than 15 percent total defects in any lot. These defects, by count, cannot exceed the following tolerances: (a) A maximum of 10 percent of the defects may not meet color requirements; (b) a maximum of 10 percent of the defects may not meet the minimum diameter requirements; and (c) a maximum of 10 percent of the defects may be in the remaining grade requirements (misshapen and dirty fresh prunes). However, not more than 5 percent of the remaining grade requirements may constitute serious damage, including a maximum of 1 percent for decay.

This rule also establishes the period of time for the regulation of imported fresh prunes. From July 15 through September 30 of each year, fresh prunes imported into the United States will be subject to the minimum grade, size and quality requirements effective under the order. This is the same period that such requirements are to be in effect for fresh prunes under the order. Imports arriving before the domestic commodity's shipping season begins or after the domestic commodity's shipping season ends will not be subject to the import requirements.

Importers are responsible for arranging for the required inspection and certification prior to importation. Importation is defined to mean release from custody of the United States Customs Service. Such inspection services are available on a fee-for-service basis. This action could therefore result in increased costs associated with importing fresh prunes. The additional costs should be offset, however, by the benefits accrued by ensuring that only acceptable quality fruit is present in the U.S. marketplace. Such quality assurance promotes buyer satisfaction and increased sales.

This rule also authorizes limited quantity exemptions from the import requirements specified herein. Individual shipments of Stanley and Merton variety fresh prunes of less than 500 pounds, and individual shipments of other fresh prune varieties of less than 350 pounds, will be excluded from the import requirements. Additionally, fresh prunes imported for consumption by charitable institutions, distribution by relief agencies, or commercial processing into products are exempt from the import requirements. The marketing order provides similar exemptions.

To ensure that fresh prunes imported exempt from the grade, size and quality requirements are utilized in exempt outlets, this rule provides that such fresh prunes are subject to the safeguard procedures for imported fruit established in § 944.350 (61 FR 13051, March 26, 1996).

Under these procedures, an importer wishing to import fresh prunes covered herein for exempt uses shall complete in triplicate, prior to importation, an ''Importer's Exempt Commodity Form.'' One copy will be held by the importer or customs broker. The second copy shall be sent to the Marketing Order Administration Branch (MOAB) of the Fruit and Vegetable Division, AMS, within 2 days of the entry of the shipment. The third copy shall accompany the exempt lot to the receiver.

The form can be obtained from the MOAB by calling (202) 720–6585 or sending a fax to (202) 720–5698. The form shall be completed at the time the commodity enters the United States. Information called for on the ''Importer's Exempt Commodity Form'' shall include:

(1) the commodity and the variety (if known) being imported,

(2) the date and place of inspection, if used to enter failing product or culls as exempt (including a copy of the inspection certificate),

(3) identifying marks or numbers on the containers,

(4) identifying numbers on the railroad car, truck or other transportation vehicle transporting product to the receiver,

(5) the name and address of the importer,

(6) the place and date of entry,

(7) the quantity imported (in pounds),

(8) the name and address of the intended receiver (e.g., processor, charity, or other exempt receiver),

(9) the intended use of the exempt commodity,

(10) the U.S. Customs Service entry number and harmonized tariff code number, and

(11) such other information as may be necessary to ensure compliance with this regulation.

The third copy of the form shall accompany the exempt lot to its intended destination. The exempt receiver shall certify that the lot has been received and it will be utilized in an exempt outlet. After the certification is signed by the receiver, the form would be returned to MOAB by the receiver, within 2 days of receipt of the lot.

Lots that are exempt from the grade, size, and quality requirements of the fresh prune import regulation will not be subject to the inspection and certification requirements in such regulation. An imported lot intended for non-exempt uses, or any portion of such a lot, that fails established grade, size, and quality requirements, can be exported, disposed of in an exempt outlet following the procedure described above, or otherwise destroyed, under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such fruit borne by the importer.

This rule also amends paragraph (a) of § 944.400 (7 CFR Part 944). That paragraph designates the Federal or Federal-State Inspection Service of the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture as the organization to perform inspection and certification of imported fresh fruits specified in section 8e of the Act. That paragraph also specifies procedures to be followed for obtaining the required inspections. This final rule designates the Federal or Federal-State Inspection Service and Agriculture and Agri-Food Canada as the organizations authorized to inspect and certify foreign produced fresh prunes as meeting import requirements issued pursuant to section 8e.

Paragraphs (b), (c), and (d) of § 944.400, specifying additional procedures for obtaining inspection and certification of imported fruits listed in the section, remain unchanged. These procedures are followed by importers to obtain inspection and certification of those fresh fruits specified in section 8e which are offered for importation into the United States.

The information collection requirements contained in this final rule have been previously approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and have been assigned OMB number 0581–0167.

The proposed rule concerning this action was published in the Federal Register on May 8, 1996 (61 FR 20756). A 30-day comment period, which ended June 7, 1996, was provided for interested persons. No comments were received.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 924

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

7 CFR Part 944

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

For the reasons set forth above, 7 CFR parts 924 and 944 are amended as follows:

1. The authority citation for 7 CFR parts 924 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

2. In section 924.319, the introductory text of paragraph (a) is revised to read as follows:

§ 924.319 Prune Regulation 19.

(a) During the period beginning July 15 and ending September 30, no handler shall handle any lot of prunes, except prunes of the Brooks variety, unless:

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

3. In § 944.350, the section heading and paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 944.350 Safeguard procedures for avocados, grapefruit, kiwifruit, limes, olives, oranges, prune variety plums (fresh prunes), and table grapes, exempt from grade, size, quality, and maturity requirements.

(a) * * *

(1) Avocados, grapefruit, kiwifruit, limes, olives, oranges, and prune variety plums (fresh prunes) for consumption by charitable institutions or distribution by relief agencies;

(2) Avocados, grapefruit, kiwifruit, limes, oranges, prune variety plums (fresh prunes), and table grapes for processing;

* * * * *

4. Section 944.400 is amended by revising the section heading and the introductory text of paragraph (a) to read as follows:

§ 944.400 Designated inspection services and procedure for obtaining inspection and certification of imported avocados, grapefruit, kiwifruit, limes, oranges, prune variety plums (fresh prunes), and table grapes regulated under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.

(a) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture is hereby designated as the governmental inspection service for the purpose of certifying the grade, size, quality, and maturity of avocados, grapefruit, limes, nectarines, oranges, prune variety plums (fresh prunes), and table grapes that are imported into the United States. Agriculture and Agri-Food Canada is also designated as a governmental inspection service for the purpose of certifying grade, size, quality and maturity of prune variety plums (fresh prunes) only. Inspection by the Federal or Federal-State Inspection Service or the Agriculture and Agri-Food Canada, with appropriate evidence thereof in the form of an official inspection certificate, issued by the respective services, applicable to the particular shipment of the specified fruit, is required on all imports. Inspection and certification by the Federal or Federal-State Inspection Service will be available upon application in accordance with the Regulations Governing Inspection, Certification and Standards for Fresh Fruits, Vegetables, and Other Products (7 CFR part 51) but, since inspectors are not located in the immediate vicinity of some of the small ports of entry, such as those in southern California, importers of avocados, grapefruit, limes, nectarines, oranges, prune variety plums (fresh prunes), and table grapes should make arrangements for inspection

through the applicable one of the following offices, at least the specified number of the days prior to the time when the fruit will be imported:

* * * * *

5. A new § 944.700 is added to read as follows:

§ 944.700 Fresh prune import regulation.

(a) Pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, the importation into the United States of any fresh prunes, other than the Brooks variety, during the period July 15 through September 30 of each year is prohibited unless such fresh prunes meet the following requirements:

(1) Such fresh prunes grade at least U.S. No. 1, except that at least two-thirds of the surface of the fresh prune is required to be purplish in color, and such fresh prunes measure not less than 1¼ inches in diameter as measured by a rigid ring: Provided, That the following tolerances, by count, of the fresh prunes in any lot shall apply in lieu of the tolerance for defects provided in the United States Standards for Grades of Fresh Plums and Prunes (7 CFR 51.1520 through 51.1538): A total of not more than 15 percent for defects, including therein not more than the following percentage for the defect listed:

(i) 10 percent for fresh prunes which fail to meet the color requirement;

(ii) 10 percent for fresh prunes which fail to meet the minimum diameter requirement;

(iii) 10 percent for fresh prunes which fail to meet the remaining requirements of the grade: Provided, That not more than one-half of this amount, or 5 percent, shall be allowed for defects causing serious damage, including in the latter amount not more than 1 percent for decay.

(2) [Reserved]

(b) The importation of any individual shipment which, in the aggregate, does not exceed 500 pounds net weight, of fresh prunes of the Stanley or Merton varieties, or 350 pounds net weight, of fresh prunes of any variety other than the Stanley or Merton varieties, is exempt from the requirements specified in this section.

(c) The grade, size and quality requirements of this section shall not be applicable to fresh prunes imported for consumption by charitable institutions, distribution by relief agencies, or commercial processing into products, but such prunes shall be subject to the safeguard provisions in § 944.350.

(d) The term ''U.S. No. 1'' shall have the same meaning as when used in the United States Standards for Grades of Fresh Plums and Prunes (7 CFR 51.1520 through 51.1538); the term ''purplish color'' shall have the same meaning as when used in the Washington State Department of Agriculture Standards for Italian Prunes (April 28, 1978), and the Oregon State Department of Agriculture Standards for Italian Prunes (October 5, 1977); the term ''diameter'' means the greatest dimension measured at right angles to a line from the stem to the blossom end of the fruit.

(e) The term ''Prunes'' means all varieties of plums, classified botanically as Prunus domestica, except those of the President variety.

(f) The term ''importation'' means release from custody of the United States Customs Service.

(g) Inspection and certification service is required for imports and will be available in accordance with the regulation designating inspection services and procedure for obtaining inspection and certification (7 CFR 944.400).

(h) Any lot or portion thereof which fails to meet the import requirements, and is not being imported for purposes of consumption by charitable institutions, distribution by relief agencies, or commercial processing into products, prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such fresh prunes borne by the importer.

(i) It is determined that fresh prunes imported into the United States shall meet the same minimum grade, size and quality requirements as those established for fresh prunes under Marketing Order No. 924 (7 CFR part 924).

Dated: August 1, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–20035 Filed 8–6–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 985

[Docket No. FV96–985–2 FIR]

Spearmint Oil Produced in the Far West; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule establishing an assessment rate for the Spearmint Oil Administrative Committee (Committee) under Marketing Order No. 985 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for the local administration of the marketing order which regulates the handling of spearmint oil produced in the Far West. Authorization to assess spearmint oil handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: Effective on June 1, 1996.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone (503) 326–2724; or Tershirra T. Yeager, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–5127. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456; telephone: (202) 720–2491, Fax (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of California, Nevada, Montana, and Utah), hereinafter referred to as the ''order.'' The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Far West spearmint oil handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable spearmint oil beginning June 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they

present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

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

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

There are approximately 260 producers of spearmint oil in the production area and 8 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of spearmint oil producers and handlers may be classified as small entities.

The spearmint oil marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of Far West spearmint oil. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on February 27, 1996, and unanimously recommended 1996–97 expenditures of $230,752 and an assessment rate of $0.10 per pound of spearmint oil. In comparison, last year's budgeted expenditures were $233,272. The assessment rate of $.10 is the same as last year's established rate. Major expenditures recommended by the Committee for 1996–97 include $96,200 for administrative expenses, $113,552 for salaries, and $21,000 for committee travel. Budgeted expenses for these items in 1995–96 were $102,900, $107,372, and $23,009, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Far West spearmint oil. Spearmint oil shipments for the year are estimated at 2,081,610 pounds which should provide $208,161 in assessment income. Income derived from handler assessments, along with interest income and funds from the committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

An interim final rule regarding this action was published in the May 6, 1996, issue of the Federal Register (61 FR 20122). That rule provided for a 30-day comment period. No comments were received.

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

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment is needed. The Committee's 1996–97 budget and those for subsequent fiscal years will be reviewed and as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of the rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period begins on June 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable spearmint oil handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action and provided for a 30-day comment period, no comments were received.

List of Subjects in 7 CFR Part 985

Spearmint Oil, Marketing agreements, Oils and fats, Reporting and recordkeeping requirements.

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

Accordingly, the interim final rule amending 7 CFR 900 which was published at 61 FR 20122 on May 6, 1996, is adopted as a final rule without change.

Dated: August 1, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–20034 Filed 8–6–96; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1996–14]

Coordinated Party Expenditures

AGENCY: Federal Election Commission.

ACTION: Final rule; technical amendment

SUMMARY: On June 26, 1996, the Supreme Court issued a decision in *Colo. Repub. Fed. Camp. Comm. et al.* v. *F.E.C.* regarding coordinated party expenditures. The Commission today is publishing a technical amendment to conform its regulations to the decision. The Commission also is publishing today a Notice of Availability for a Petition for Rulemaking it received after the decision.

EFFECTIVE DATE: August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Teresa A. Hennessy, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202)219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act of 1971 (''FECA'') governs, *inter alia*, coordinated party expenditures by party committees. 2 U.S.C. 441a(d). A party committee is a political committee that represents a political party and is part of the official party structure. 11 CFR 100.5(e)(4). Pursuant to 11 CFR 110.7, a party committee may make coordinated expenditures on behalf of a candidate for Federal office who is affiliated with the party in addition to direct contributions to the candidate under 2 U.S.C. 441a(a). The Commission's regulations specifically provide that a national committee of a political party, and a State committee of the party, may make these expenditures in connection with the general election campaign of a candidate for the U.S. House of Representatives (''House'') or the U.S. Senate (''Senate''). 11 CFR 110.7(b)(1). The regulations also provided that party committees may not make independent expenditures on behalf of a candidate for the House or the Senate. 11 CFR 110.7(b)(4). An independent expenditure is an expenditure that expressly advocates the election or defeat of a candidate for Federal office, *see* 11 CFR 100.22(a), and is not coordinated with the candidate on whose behalf it is made. 11 CFR 109.1.

In *Colo. Repub. Fed. Camp. Comm. et al.* v. *F.E.C.*, 116 S.Ct. 2309 (1996), the Commission had alleged, inter alia, that the Colorado Republican Federal Campaign Committee exceeded the Act's limits for coordinated party expenditures when it financed advertisements referring to a Democratic candidate for the U.S. Senate from Colorado. The Court ruled that party committees are capable of making independent expenditures on behalf of their candidates for Federal office and that these expenditures are not subject to the coordinated party expenditure limits at 2 U.S.C. § 441a(d). 116 S.Ct. 2312–15. The Court also stated that, because the coordinated party expenditure limits for presidential elections were not at issue in the case, the decision did not ''* * * address issues that might grow out of the public funding of Presidential campaigns''. 116 S.Ct. 2314. Section 110.7(b)(4) of the Commission's regulations has been deleted to follow the Supreme Court's decision. Since the ruling is limited to congressional campaigns, the Notice does not revise the provisions for coordinated party expenditures on behalf of presidential candidates.

Therefore, the Commission is publishing this Notice to make the necessary technical amendment to its regulations. The Notice amends 11 CFR 110.7 to conform to the Court's decision. Because the amendment is merely technical, it is exempt from the notice and comment requirements of the Administrative Procedure Act. *See* 2 U.S.C. 553(b)(B). It is also exempt from the legislative review provisions of the FECA. *See* 2 U.S.C. 438(d). These exemptions allow the amendment to be made effective immediately upon publication in the Federal Register. As a result, this amendment is made effective on August 7, 1996.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

I certify that the attached final rule will not have a significant economic impact on a substantial number of small entities. The basis of the certification is that the rule's repeal is necessary to conform to a recent Supreme Court decision. The repeal permits, but does not require, the expenditure of funds in certain Federal campaigns. Therefore, no significant economic impact is caused by the final rule.

List of Subjects in 11 CFR Part 110

Campaign funds, Political committees and parties.

For the reasons set out in the preamble, Subchapter A, Chapter I, Title 11 of the Code of Federal Regulations is amended as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for Part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

§ 110.7 Party Committee Expenditure Limitations (2 U.S.C. 441a(d)).

2. Section 110.7(b)(4) is removed.

Dated: August 2, 1996

John Warren McGarry,

Vice Chairman, Federal Election Commission.

[FR Doc. 96–20102 Filed 8–06–96; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AEA–03]

Amendment of Class E Airspace; New York, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at New York, NY to accommodate a planned Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at the Lincoln Park Airport, Lincoln Park, NJ. This amendment also corrects the description of the New York, NY Class E Airspace Area published as a Notice of Proposed Rulemaking in the Federal Register April 30, 1996 (61 FR 19001). The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Lincoln Park Airport.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Frances T. Jordan, Airspace Specialist, Operations Branch, AEA–530, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On April 30, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a Class E airspace area at New York, NY (61 FR 19001). The

development of a GPS SIAP at Lincoln Park Airport, Lincoln Park, NJ made this action necessary. This action also corrects the description of the New York, NY Class E airspace as it was published in the Notice Of Proposed Rulemaking.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas designations are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the Class E airspace area at New York, NY. The development of a GPS SIAP at Lincoln Park Airport, Lincoln Park, NJ has made this action necessary. The intended effect of this action is to provide adequate Class E airspace for aircraft executing the GPS RWY 19 SIAP at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995 and effective September 16, 1995, is amended as follows:

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

* * * * *

AEA NY E5 New York, NY [Amended]

John F. Kennedy International Airport, New York, NY
(lat. 40°38′25″N, long. 73°46′40″W.)
Canarsie VOR/DME
(lat. 40°36′45″N., long. 73°53′40″W.)
LaGuardia Airport, New York, NY
(lat. 40°46′38″N., long. 73°52′21″W.)
LaGuardia VOR/DME
(lat. 40°47′01″N., long. 73°52′06′W.)
Teterboro Airport, NJ
(lat. 40°51′00″N., long. 74°03′40″W.)
Netwark International Airport, NJ
(lat. 40°41′34″N., long. 74°10′07″W.)
Morristown Municipal Airport, NJ
(lat. 40°47′57″N., long. 74°24′54″W.)
Chatham NDB
(lat. 40°44′27″N., long. 74°25′48″W.)
Essex County Airport, Caldwell, NJ
(lat. 40°52′30″N., long. 74°16′53″W.)
MOREE LOM
(lat. 40°52′47″N., long. 74°20′04″W.)
Paterson NDB
(lat. 40°56′47″N., long. 74°09′03″W.)
Lincoln Park Airport, NJ
(lat. 40°56′51″N., long. 74°18′52″W.)

That airspace extending upward from 700 feet above the surface within a 7.9-mile radius of John F. Kennedy International Airport and within 2.7 miles each side of the Canarsie VOR/DME 212° radial, extending from the Canarsie VOR/DME to 3.5 miles southwest of the VOR and within a 6.9-mile radius of LaGuardia Airport and within 3.1 miles each side of the LaGuardia VOR/DME 035° radial extending from the LaGuardia VOR/DME to 8.1 miles northeast of the LaGuardia VOR/DME and within a 6.7-mile radius of Teterboro Airport and within 3 miles either side of a 048° bearing from the northeast end of a northeast to southwest runway at Teterboro Airport extending from the 6.7-mile radius area to 10 miles northeast of the northeast end of the runway and within a 7-mile radius of Newark International Airport and within a 6.6-mile radius of Morristown Municipal Airport and within 8 miles northwest and 4 miles southeast of a 204° bearing from the Chatham NDB extending from the Chatham NDB to 16 miles southwest of the NDB and within a 6.6-mile radius of Essex County Airport and within 4 miles north and 8 miles south of a 276° bearing from the MOREE LOM extending from the MOREE LOM to 16 miles west of the LOM and within 8 miles northwest and 4 miles southeast of a 057° bearing from the Paterson NDB extending from the Paterson NDB to 16 miles northeast of the NDB and within a 7-mile radius of Lincoln Park Airport.

* * * * *

Issued in Jamaica, New York on July 9, 1996.

John S. Walker,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 96–20157 Filed 8–6–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–000; Order No. 587]

Standards for Business Practices of Interstate Natural Gas Pipelines

July 31, 1996.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule; notice regarding electronic filing of *pro forma* tariff sheets.

SUMMARY: The Federal Energy Regulatory Commission is issuing a notice regarding the filing of *pro forma* tariff sheets required by the final rule, 61 FR 39053 (July 26, 1996), 76 FERC ¶61,042 (July 17, 1996). Pipelines should make such filings electronically in accordance with Section 154.4 of the Commission's regulations.

DATES: This final rule is effective August 26, 1996. The *pro forma* tariff filings will be made pursuant to a staggered schedule in October through December of 1996.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 208–1283.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 or 1–800–856–3920. To access CIPS, set your communications software to use 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200, or 300 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS in ASCII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 2A, 888 First Street NE., Washington, DC 20426.

The Commission's bulletin board system also can be accessed through the FedWorld system directly by modem or through the Internet. To access the FedWorld system by modem:

- Dial (703) 321–3339 and logon to the FedWorld system
- After logging on, type: /go FERC

To access the FedWorld system, through the Internet:

- Telnet to: fedworld.gov
- Select the option: [1] FedWorld
- Logon to the FedWorld system
- Type: /go FERC

Or:

- Point your Web Browser to: http://www.fedworld.gov
- Scroll down the page to select FedWorld Telnet Site
- Select the option: [1] FedWorld
- Logon to the FedWorld system
- Type: /go FERC

Standards for Business Practices of Interstate Natural Gas Pipelines; Notice Regarding Electronic Filing of Pro Forma Tariff Sheets

[Docket No. RM96–1–000]

July 31, 1996.

In the Commission's July 17, 1996 order in this docket,[1] the Commission established a schedule for pipelines to file *pro forma* tariff sheets to comply with the business practice standards adopted by the Commission. Pipelines making *pro forma* tariff filings in response to this order should make these filings electronically as provided in Section 154.4 of the Commission's regulations.

[1] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (July 26, 1996), 76 FERC ¶61,042 (July 17, 1996).

Lois D. Cashell,

Secretary.

[FR Doc. 96–19927 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 94N–0031]

RIN 0910–AA19

Food Labeling; Nutrition Labeling, Small Business Exemption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its food labeling regulations to modify the basis on which low-volume food products of small businesses are exempted from the requirements for nutrition labeling. The regulations also establish a notification procedure for small businesses to claim exemption for qualifying food products. This final rule is in response to the Nutrition Labeling and Education Act Amendments of 1993 (the 1993 amendments), and it is intended to provide an understanding of how the small business food labeling exemption provisions of the 1993 amendments operate.

DATES: The effective date of this rule is October 7, 1996.

Submit written comments on the information collection requirements by October 7, 1996. This information collection has been approved by the Office of Management and Budget (OMB) for 90 days, under OMB control no. 0910–0324.

ADDRESSES: Submit written comments on the information collection requirements to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFS–151), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

SUPPLEMENTARY INFORMATION:

I. Background

A. Procedural

On November 8, 1990, the Nutrition Labeling and Education Act of 1990 (Pub. L. 101–535) (the 1990 amendments) was enacted. This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One of the most notable aspects of the 1990 amendments is that they added section 403(q) to the act (21 U.S.C. 343(q)). This section, as amended by the Nutrition Labeling and Education Act Amendments of 1993 (Pub. L. 103–80) (the 1993 amendments) and the Dietary Supplement Health and Education Act of 1994 (Pub. L. 103–417) (the DSHEA), provides that, with certain exceptions, a food, including both conventional foods and dietary supplements, is misbranded unless its label or labeling bears certain nutrition information (nutrition labeling).

Among the exceptions that Congress made to the nutrition labeling requirement was one for small businesses based upon the value of their gross sales (section 403(q)(5)(D) of the act). Following the expression of concerns by small businesses about the narrow coverage of the exemption and about the problems that relatively small firms would have in meeting the requirements of the new law, Congress passed the 1993 amendments establishing a new exemption for low-volume food products of small businesses under section 403(q)(5)(E) of the act. This section provides that low-volume products of small businesses need not be nutrition labeled.

What constitutes a low-volume food product is defined in the act by the number of units of the product sold per year; what constitutes a small business is defined by the number of full-time equivalent employees (FTE's) that the firm employs. For a food product to be exempt under this section, a small business must file a notice with FDA claiming the exemption and providing information as to: (1) The average number of FTE's for itself and all of its affiliates and (2) the approximate number of units of its sales in the United States for each product for which an exemption is claimed. For products that were on the market before May 8, 1994, the 1993 amendments provide a gradual phase-down of what constitutes a low-volume food product of a small business. The number of units decreases from ''fewer than 600,000'' for the 12-month period before May 8, 1994; to ''fewer than 400,000'' for the 12-month period before May 8, 1995; to ''fewer than 200,000'' for the 12-month period before May 8, 1996; and to ''fewer than 100,000'' thereafter. The number of FTE's starts at ''fewer than 300'' through May 8, 1995, decreases to ''fewer than 200'' for the year before May 8, 1996, and down to ''fewer than

100'' thereafter. Products that initially come onto the market after May 8, 1994, are subject to the ''fewer than 100,000 unit and 100 FTE'' limit.

Thus, the 1993 amendments provide additional time before low-volume food products of small businesses must conform with the requirements for nutrition labeling. By doing so, the 1993 amendments permit small businesses to use up stocks of labels, thereby reducing the costs of label inventory disposal, and to avoid having to compete for design and printing resources with larger firms. By providing that no food product from a firm having fewer than 100 employees and for which there are sales of fewer than 100,000 units per year will have to be nutrition labeled (at least until after May 8, 2002), the 1993 amendments save small firms the expense of nutrient analysis and preparation of new labels for those products.

Under the provisions of the 1993 amendments, as noted above, persons that claim an exemption for a low-volume food product must file an annual notice with FDA claiming the exemption. For products on the market before May 8, 1994, the first such notice was due May 7, 1994, and a second notice was due on May 7, 1995 (section 403(q)(5)(E)(iii) of the act). Although the filing of the notice is necessary for an exemption, it does not entitle a firm to an exemption. Under section 403(q)(5)(E)(I)(I) and (q)(5)(E)(ii) of the act, a product is not exempt if its labeling provides nutrition information or bears a nutrient content or health claim.

One other aspect of the small business exemption is relevant for background purposes. In providing the new exemption for low-volume food products of small businesses (section 403(q)(5)(E) of the act), Congress noted that FDA had misinterpreted its intent as related to the small business exemption in the 1990 amendments, which is based upon total gross sales, by applying it to manufacturers, packers, and distributors in addition to retailers (section 403(q)(5)(D)). However, recognizing that FDA had issued regulations that small businesses were relying on, Congress provided that section 403(q)(5)(D) of the act would apply to all firms through May 7, 1995, but only to firms that sell directly to the consumer (i.e., retailers) after that date (Statement of Explanation, H.R. 2900, 139 Congressional Record H6358 (August 6, 1993)).

The 1993 amendments were self-effectuating in establishing the provisions for exemption from nutrition labeling for low-volume foods of small businesses. In passing the 1993 amendments, Congress was concerned that action be taken quickly. In discussing the need for quick action, Senator Bumpers noted that: ''To come into compliance with the May 1994, effective date of the Nutrition Labeling and Education Act requirements, small businesses must in the very near future begin to incur the cost of initiating product analysis and labeling redesign.'' (139 Congressional Record S10818 (August 6, 1993.)

Further, in introducing H.R. 2900 (the bill that became the 1993 amendments) for consideration, Senator Kennedy stated that: ''No action or response by the FDA is required for the exemption to be in place. Businesses with fewer than 10 employees, which sell fewer than 10,000 units of products, are (not) required to file any notice with the FDA.'' (139 Congressional Record S10817 (August 6, 1993).) The provisions of the 1993 amendments became effective upon their enactment on August 13, 1993.

Although FDA recognized that the 1993 amendments were self-effectuating, it concluded that rulemaking would be useful in providing a common understanding of how the exemption provisions operate. Thus, to facilitate implementation of the 1993 amendments, FDA published in the Federal Register of March 14, 1994, a proposal entitled ''Food Labeling; Nutrition Labeling, Small Business Exemption'' (hereinafter referred to as ''the small business exemption proposal'') (59 FR 11872) to: (1) Modify § 101.9(j)(1)(21 CFR 101.9(j)(1)) and § 101.36(f)(1) (21 CFR 101.36(f)(1)), which provide for a small business exemption based upon gross sales, to reflect the provisions of the new law, (2) incorporate the provisions for exemption of low-volume food products of small businesses, and (3) establish procedures for the filing with FDA of notices from small businesses claiming exemptions for low-volume food products.

FDA received 30 letters, each containing one or more comments, to the small business exemption proposal. The responses were received from trade and retail associations, Federal and State government agencies, and industry. A number of the comments supported various aspects of the proposal. Several comments addressed issues outside the scope of this proposal, which will not be responded to here. A number of comments suggested modifications in, or were opposed to, various provisions of the small business exemption proposal. A summary of the arguments and changes suggested by these latter comments, and the agency's responses, are provided below.

B. FDA's Experience with the Filing of Notices

Before responding to the comments, it may be informative to discuss FDA's experience with the notices that have been submitted claiming exemptions under the 1993 amendments. FDA began receiving notices almost immediately after enactment of the 1993 amendments with approximately 150 notices being received by March 14, 1994, when it published the small business exemption proposal. Approximately, 3,600 more notices were received by May 7, 1994, the date when all such notices were to have been filed for products already on the market. The agency has continued to receive notices from firms claiming exemption for products that had been on the market before May 8, 1994, as well as notices for new firms and new products.

Although not required by the 1993 amendments to approve or even review the notices, FDA has maintained a file on each notice and has attempted to acknowledge receipt of the notice. One of FDA's first steps following receipt of a notice has been to record the name and address of the firm in a computer data base. In establishing and maintaining its file of notices claiming an exemption, FDA has reviewed each notice to determine whether it contained the basic information on the number of employees and the number of units of food products sold by the firm in the United States. Finally, FDA has issued a letter acknowledging receipt of the notice for each notice that appeared to contain complete information and appeared to, in fact, be qualified for the exemption.

One of the intended uses of the computer data base information on firms that had submitted notices to the agency was to develop for FDA field offices and State enforcement agencies a list of firms that had submitted notices claiming an exemption under the provisions of the 1993 amendments. Enforcement action under the 1990 amendments was delayed until after August 8, 1994, by enactment of Pub. L. 103–261 on May 26, 1994. This public law extended the time period for compliance with the provisions of section 403(q) of the act until after August 8, 1994, for certain food products. By August 8, 1994, FDA had received approximately 6,000 notices claiming exemption under the 1993 amendments. Between that time and the present, FDA has received approximately 3,000 notices from

additional firms claiming exemptions under the 1993 amendments.

In August 1994, FDA made its data base of the names and addresses of each firm that had submitted a notice under the provisions of the 1993 amendments available to its field offices and State enforcement agencies through a computer bulletin board system called ''FDA PRIME CONNECTION,'' which is maintained by the agency. FDA also placed information concerning the names and addresses of foreign firms and American importers filing notices on a second bulletin board system called ''FIARS'' (''FDA Import Alert Retrieval System'') that is available to FDA's import offices. FDA's enforcement offices were advised to review these listings to determine whether a firm had submitted a notice under the 1993 amendments if a product appeared to be out of compliance with the nutrition labeling requirements of the act.

As stated above, under the 1993 amendments, the notice claiming an exemption must be resubmitted every 12 months. The anniversary date for most such notices, i.e., those covering products on the market before May 8, 1994, is May 7th of each year. By May 7, 1995, FDA had received just over 1,100 notices claiming a continued exemption for food products for the time period of May 8, 1995, to May 7, 1996, under the provisions of section 403(q)(5)(E)(ii)(II) of the act. In the beginning of June, the agency sent a letter to each firm that had not yet renewed its exemption reminding it of the need to submit a new exemption notice to claim exemption for eligible products for the time period of May 8, 1995, to May 7, 1996. The reminder letter asked that the notices be submitted to the agency by July 10, 1995. By July 31, 1995, FDA had received a total of approximately 4,000 notices for the time period of May 8, 1995, to May 7, 1996. A small number of firms responded to the June reminder letters by stating that they were out of business or had revised the labels of their products to comply with the requirements for nutrition labeling.

A small number of the notices submitted to the agency were deficient, or inconsistent with the provisions of the 1993 amendments, in one or more aspects. A small number of the notices were deficient in that they did not supply information on the average number of FTE's or the number of units of product sold in the United States. Others were deficient in that they did not name the products sold in the United States for which the firm was claiming exemption. Some notices were inconsistent with the provisions of the 1993 amendments in that the average number of FTE's was 300 or more, or the number of units sold in the United States was 600,000 or more. To the extent that its resources permitted, FDA contacted by telephone or by mail those firms that had submitted notices that were deficient or contained information inconsistent with the provisions of the 1993 amendments. In some cases, products appeared to be ineligible for the exemption without further clarification; e.g., a bakery claimed an exemption for ''cookies'' and listed total sales of less than one million units. Upon questioning concerning the information in the notice, the firm advised that it produces several different types of cookies, none with sales of greater than 100,000 units. While resolving such questions, FDA has retained the firm's name and address in the data bases for exempt firms and for products. There were some instances where FDA advised firms submitting notices that one or more products listed in their notice were not exempt from nutrition labeling because either they did not qualify as a small business or the product was not a low-volume food product. In such a case the firm or the product were removed from the computer listing of exempt firms or exempt products.

II. The Final Rule

A. Provisions Rendered Moot by Passage of Time

Certain provisions contained in the small business exemption proposal are subject to timeframes, after which they no longer have an effect. Proposed § 101.9(j)(1)(i) would have provided an exemption until May 7, 1995, for food offered for sale by a manufacturer, packer, or distributor based upon the firm's gross sales. Proposed § 101.9(j)(18)(i)(A) would have provided an exemption for low-volume food products for the time period of May 8, 1994, to May 7, 1995. The passage of time has rendered both of these proposed provisions moot. Accordingly, FDA is not incorporating § 101.9(j)(1)(i) and (j)(18)(i)(A) as proposed on March 14, 1994 (59 FR 11880), and is renumbering the remaining paragraphs in § 101.9(j)(1) and (j)(18) in this final rule. Because § 101.9(j)(1)(ii) is identical to the existing regulation, it will not be set out in this final rule.

B. Dietary Supplements

On January 4, 1994, before it issued the small business exemption proposal, FDA issued final rules on nutrition labeling and nutrient content claims for dietary supplements. At that time, the act provided an exemption from nutrition labeling for dietary supplements of vitamins or minerals but not for dietary supplements of herbs or other nutritional substances. Thus, in the small business exemption proposal, FDA included provisions for conventional foods and dietary supplements of herbs and other nutritional substances under proposed § 101.9(j)(18) and for dietary supplements of vitamins and minerals under proposed § 101.36(f)(2).

The DSHEA amended section 403(q)(5)(F) of the act to eliminate the distinction between dietary supplements of vitamins or minerals and dietary supplements of herbs and other nutritional substances. In addition, even though the nutrition labeling and nutrient content claim requirements for dietary supplements were to go into effect on July 1, 1995, in the wake of the DSHEA, FDA published a notice on February 9, 1995 (60 FR 7711), in which it stated that, given the need to modify its regulations on nutrition labeling and nutrient content claims for dietary supplements to respond to the DSHEA, it did not intend to enforce those regulations until after December 31, 1996. The agency published a document proposing appropriate changes to its regulations for the nutrition labeling and nutrient content claims for dietary supplements on December 28, 1995 (60 FR 67194).

FDA notes that the DSHEA does not alter the exemption for low-volume food products created by the 1993 amendments as they relate to the submission of notices to claim exemption for dietary supplements. The agency has received some notices claiming exemption for dietary supplements under the provisions of the 1993 amendments even though the agency has yet to enforce the labeling requirements with respect to this class of products. FDA is unaware of any basis for not moving forward to establish provisions for the exemption of dietary supplements under the 1993 amendments. None of the comments on the small business exemption proposal raised a question about its application to dietary supplements. To streamline the regulations and to be consistent with the manner in which other exemptions and special labeling provisions are listed under § 101.36(g)(21 CFR 101.36(g)), FDA has modified § 101.36(f) to cross-reference the small business exemption in § 101.9(j)(1) and the exemption for low-volume food products of small businesses in § 101.9(j)(18), rather than codify those exemptions in § 101.36.

C. Definition of ''Person''

1. Two comments stated that the agency should clarify that the exemption is available to private label packers and distributors as well as to manufacturers. The comments urged that FDA state that a ''person'' entitled to apply for the low-volume food product small business exemption includes a manufacturer, a packer, or a distributor of such food products. The comments stated that the clarification that they suggested is consistent with the law and with the preamble to the proposal and would prevent confusion over the exclusion of manufacturers, packers, and distributors from the exemption based on gross sales.

FDA agrees that the 1993 amendments should be interpreted to give as much relief to small businesses as can fairly be provided. FDA recognizes that, by tracking the language of the 1993 amendments and using the term ''person'' in the proposal, the agency may not have made clear that all types of small businesses are eligible to submit a notice for the exemption for low-volume foods. The agency has modified § 101.9(j)(18) to clarify that a small business, whether it is a manufacturer, a packer, a distributor, including an importer or a retailer that introduces the food into interstate commerce, is eligible to claim an exemption for a low-volume food product under the 1993 amendments.

2. One comment stated that the ''person'' claiming the exemption for a product should not be limited to the manufacturer or the company whose name is on the label of the food product. The comment argued that the person that is the exclusive sales agent for a firm's products also should be able to file the notice. The comment argued that, because the 1993 amendments consistently refer to the person who claims an exemption for a food product, the exemption need not be linked to the manufacturer of the product but can be claimed by the firm that makes sales of the food product in the United States. The comment stated that the focus of the 1993 amendments is on making accountable the person who presents the product to the consumer. The comment identified three provisions of the 1993 amendments that it stated supported its position:

(1) The law does not mandate that one affiliate (manufacturing) instead of another (marketing) file the notice,

(2) The very small business exemption from the notice requirement applies to a person who sells fewer than 10,000 units of a food product in a year, and

(3) A notice may be filed by importers, who of course are not manufacturers of the products they handle.

The comment concluded that the exclusive sales agent knows the total number of units of a food product sold in the United States and can make an accurate statement of those sales on the notice.

As noted in response to the preceding comment, FDA agrees that the law does not mandate that the ''person'' filing the claim be the manufacturer or the company whose name is on the label. The agency agrees that an exclusive sales agent can file a notice claiming an exemption for a low-volume food product under the 1993 amendments.

This comment interprets the intent of the 1993 amendments too narrowly, however, by linking the exemption directly to the seller of the food product, as opposed to the manufacturer, repacker, or distributor. The 1993 amendments are silent in defining what type of small business constitutes the ''person'' that may submit a notice claiming an exemption for a low-volume food product. The only specific requirement that relates to that person is that the average number of FTE's of the person, and of all of its affiliates, be fewer than the number established as the standard by the statute (i.e., less than 300 between 1994 and 1995, less than 200 between 1995 and 1996, and less than 100 after that date or less than 100 for any product initially introduced into interstate commerce on or after May 8, 1994). The modification to § 101.9(j)(18) that FDA has made in response to comment 1 in section II.C.1. of this document will adequately address the concerns of this comment.

3. Several comments addressed the relationship of affiliated firms to those firms claiming an exemption under the provisions of the 1993 amendments. One comment stated that the guiding notion in defining ''affiliate'' should be whether one entity actually exercises control over a small food company. It stated that indirect and unexercised control should not create the status of affiliate. The comments argued that tenuous relationships linking far flung affiliates, and standard contractual arrangements that permit small food companies to exist, should not be considered an affiliation.

The Statement of Explanation presented by Mr. Waxman in presenting the bill that became the 1993 amendments explains that:

> Section 403(q)(5)(E)(vi)(III) defines person, in the case of a corporation, to include all domestic and foreign affiliates of the corporation. The FDA should consider the regulations issued by the Small Business Administration on this issue. 13 CFR. 131.401 (sic) (1993).
>
> (139 Congressional Record H6358 (August 6, 1993).)

Section 121.401 of Title 13 of the Code of Federal Regulations (13 CFR 121.401) sets out the provisions established by the Small Business Administration (SBA) concerning affiliation. (FDA presumes that the reference in the Congressional Record to 13 CFR 131.401 was a typographical error because that section does not involve the question of affiliation.) 13 CFR 121.401 provides a general rule on the determination of affiliation plus more specific instructions on how to determine whether affiliation exists between two firms. Among other things, 13 CFR 121.401 states that size determinations shall include the applicant concern and all its domestic and foreign affiliates. Moreover, all affiliates, regardless of whether organized for profit, must be included. Concerns are affiliates of each other when either directly or indirectly one concern controls or has the power to control the other; or a third party or parties controls or has the power to control both; or an *identity of interest* between or among parties exists such that affiliation may be found. In determining whether affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships.

FDA agrees with the comment that stated that standard contractual arrangements, to the extent that they do not create an identity of interest, should not be considered as evidence of affiliation. However, the other comments on affiliation are inconsistent with the provisions of 13 CFR 121.401. The other comments argued that affiliation is not present if an entity is not actually exercising control over the affiliate. The SBA regulation provides, however, that concerns are affiliates of each other when one ''controls or has the power to control.'' None of the comments attempted to explain how their suggested interpretations of the term ''affiliation'' were consistent with 13 CFR 121.401.

Because the suggestion for the interpretation of affiliation presented in the comments is not consistent with the congressional intent, as evidenced by the Statement of Explanation, FDA concludes that modification of the meaning of ''affiliation'' as suggested by the comments would be improper, and the agency is not making the suggested change. To reduce the potential for confusion over the use of the term

''affiliate'' in its regulation, however, FDA is modifying the definition of the term ''person'' in § 101.9(j)(18)(vi)(C) to include a reference to 13 CFR 121.401 as defining ''affiliate.''

4. One comment stated that FDA should not expand upon Congress' definition of ''person'' to include, for companies that are not corporations, all affiliates of that company.

FDA recognizes that the 1993 amendments specifically refer to corporations when stating that: ''the term 'person' in the case of a corporation includes all domestic and foreign affiliates of the corporation.'' Accepting the view that the 1993 amendments are silent with respect to how entities other than corporations are to be treated, the fact remains that section 201(e) of the act (21 U.S.C. 321(e)) states that the ''term 'person' includes individual, partnership, corporation, and association.'' Even though the 1993 amendments are silent as to how persons other than corporations should be treated, there is nothing that suggests that those persons should be treated differently than corporations. None of the comments presented any basis for treating these other persons differently than corporations. Therefore, FDA concludes that the best approach would be to treat all persons the same. Thus, in § 101.9(j)(18)(vi)(C), the term ''person,'' as relates to an entity that is not a corporation, includes all affiliates as defined in 13 CFR 121.401 for purposes of section 403(q)(5)(E) of the act.

D. Definition of ''Unit''

5. Some comments stated that whether a food is a low-volume food product should be based upon the number of units of a food product for which the packer or distributor is responsible, regardless of the number of similar units produced by its manufacturer for other persons. These comments stated that FDA has inadequately explained in the proposal how the number of units criterion and the definition of ''food product'' should be applied to private label food products. They stated that a private label packer or distributor that is a small business should be able to apply for, and claim the benefit of, the small business exemption based on the number of units of food products the packer or distributor sells annually under its own private label. They reasoned that this approach would be consistent with the agency's explanation of the application of the small business exemption based upon gross sales, where the name of the firm on the label determines responsibility for the label for the purpose of determining the firm that must have sales of less than $500,000 for purposes of section 403(q)(5)(D) of the act, which was passed as part of the original 1990 amendments. The comments stated that FDA's interpretation of eligibility for exemption under the 1993 amendments should be consistent with its interpretation under the 1990 amendments.

Having evaluated these comments and the notices that it has received over the past year, FDA concludes that there are some basic misunderstandings about the products that are eligible for exemption under the 1993 amendments, particularly with respect to how to count units in determining whether a product is a low-volume food product. The comments also evidence a belief that the agency has considerable leeway in its interpretation of the 1993 amendments. To the contrary, the 1993 amendments are highly specific and prescriptive in providing an exemption from the requirements of mandatory nutrition labeling for low-volume food products of small businesses and leave little room for interpretation by FDA.

It is not clear that those submitting the comments understand fully the differences between the exemption for small businesses under the 1990 amendments and the exemption under the 1993 amendments. In presenting guidance on the 1990 small business exemption in ''Food Labeling QUESTIONS AND ANSWERS'' (Office of Food Labeling, FDA, August, 1993), FDA stated that, for a food to be eligible for the exemption, the firm that was responsible for the labeling of the food, i.e., the firm whose name appeared on the label of the food product, would be the firm whose total gross sales would be considered; that is, the firm whose gross sales must be less than $500,000 for the product in question to be eligible for exemption.

Under section 403(q)(5)(E) of the act, which was added by the 1993 amendments, however, whether a food product is eligible for exemption is based on two factors, neither of which involves the value of the firm's gross sales. One factor is the number of employees of the firm that is submitting the notice claiming the exemption (see the discussion above under section II.C. of this document on the definition of ''person'' and the discussion under section II.F. of this document on ''calculation of average number of FTE's.'' The other is the number of units of the product that is sold in the United States. The latter factor is the one that is not well-understood by the comments.

Under section 403(q)(5)(E) of the act, whether a food product is a low-volume food product, and, thus, eligible for the exemption, is not dependent on the identity of the firm claiming the exemption. This determination depends only on the total number of units of that specific food product that are sold in the United States (see, e.g., section 403(q)(5)(E)(I)(IV) of the act).

A specific food product is defined by three parameters: (1) Its being from a single manufacturer or bearing the same brand name; (2) bearing the same statement of identity; and (3) having a similar method of preparation (section 403(q)(5)(E)(vi)(II) of the act). This definition means that, in counting the number of units of a food product, e.g., a cake mix, for purposes of claiming an exemption, firms must consider: (1) The total number of units of the cake mix produced by the manufacturer for sale to consumers in the United States regardless of the brand name under which it is packaged and (2) the total number of units of the cake mix labeled under one brand name, regardless of the number of manufacturers that produced it. If either number exceeds the low-volume criteria, the product is not eligible for the exemption.

Presume, for example, that a manufacturer produces one million packages or units of a cake mix for sale in the United States. The cake mix is not a low-volume food product and, thus is not eligible for exemption under the 1993 amendments, even if the manufacturer ships all of the product in equal quantities to 20 small businesses, and each puts its own brand name on the cake mix that it sells. Alternatively, if one million packages of a cake mix are made in equal quantities by 20 different manufacturers, but all bear the same brand name, the cake mix is not eligible for exemption under the 1993 amendments, even if each of the manufacturers has less than 100 employees, because, again, it is not a low-volume food product.

On the other hand, a food product could be eligible for the exemption even though it is manufactured by a large firm, if the food product qualifies as a low-volume food product. If a manufacturer with too many employees to qualify for the exemption were to make a product under another firm's brand name, the product may qualify as a low-volume food product if the sales of that private formula food product are less than the applicable number defining a low-volume food product.

In the case of the cake mix, for example, presume that a small business with only 15 employees contracts with 1 large copacker or manufacturer to

make 50,000 units annually of that small business's special private formula cake mix which is not available to any other firm. In such a case, the private formula cake mix would be exempt under the 1993 amendments upon the submission of a notice by the small business claiming an exemption, regardless of the number of employees of the copacker and regardless of the amounts of other products that the copacker produces. The cake mix would be exempt because the firm claiming the exemption is small (15 employees), and the cake mix is a low-volume food product (neither the total number of units produced for sale in the United States, nor the total number of units sold under the brand name in question, exceed 50,000).

In summary, contrary to the assertions by the comments, under the 1993 amendments (section 403(q)(5)(E) of the act), and in contrast to the small business exemption established in the 1990 amendments (section 403(q)(5)(D) of the act), the size of the company listed on the label of a food product is not necessarily determinative of whether that product is exempt from the nutrition labeling requirement. While that firm must be a small business (that is, have less than the requisite number of employees) to be eligible to claim an exemption, the number of products sold in the United States must be below the requisite levels for the product to be eligible for the exemption, and that number may include products sold by companies other than the company that is seeking the exemption. A product qualifies for the exemption under section 403(q)(5)(E) of the act only if the company submitting the notice is small, and the product is a low-volume food product.

6. Several comments stated that the suggested method for counting products from a private label manufacturer that was in the small business exemption proposal was inappropriate. One comment suggested that the 600,000-unit exemption be based on the sales/production of the firm that takes control of (i.e., owns) the label and packaging on which nutrition information would otherwise be included. According to the comments, in many cases, that firm will be the private-label manufacturer; in other cases, that firm will be the distributor and marketer.

Another comment stated that a private label distributor should be able to claim an exemption if the number of units sold in the United States under the distributor's own label meets the statutory requirement. The comment explained that it would defeat the purpose of the exemption to require a distributor to aggregate all units of a food produced by a common manufacturer and sold by other firms. Such an interpretation, according to the comment, would require a small distributor that sells a food in a low-volume to provide nutrition labeling, contrary to Congress's intent to relieve the burden on such firms. The comment noted that the approach that it was suggesting is the only feasible way in which the exemption provision can be administered because a distributor cannot know how many units of the food produced by the particular manufacturer were sold in the United States by other distributors under other brand names. Another comment stated that the proposed requirement that a private label manufacturer count all production in determining whether it is eligible for the exemption is inconsistent with the 1993 amendments and may produce a hardship on ''mom and pop stores'' that cannot produce product on their own, particularly if each has to supply labels to the manufacturer for labeling of the product.

FDA agrees that the intent of the 1993 amendments was to provide relief for small businesses. In considering the intent of the 1993 amendments, it is important to remember that Congress amended a section of the act (section 403(q)) that was added by the 1990 amendments. The overall intent of the 1990 amendments is to ensure that nutrition information is available on almost all foods marketed in the United States. The 1993 amendments were enacted to provide relief for small businesses from the economic burden of having to nutrition label low-volume food products. This fact does not mean, however, that Congress intended to exempt all products that bear the name of small businesses. Rather, Congress sought to exempt those products that, because of the size of the firm that sold them and the number of units of the product that were sold, would likely be discontinued by the firm because the costs of relabeling would be too great to make continued marketing of the product economically feasible. Thus, Congress tailored the qualifications for an exemption to meet these goals.

Congress apparently felt that, in circumstances where a firm that sells the product is small, but the firm that manufactures it is large and manufactures it for other firms as well, in numbers that exceed the ''low-volume'' standard, it is reasonable to expect that the larger company would assist the smaller company in coming into compliance with the law by, for example, providing nutrition information for the product. Regardless of whether it is reasonable to expect that a firm will not place its suppliers or customers in jeopardy of violating the law, it is FDA's responsibility to ensure that there is compliance with the provisions of the 1993 amendments.

Section 403(q)(5)(E)(vi)(II) of the act states that a ''food product'' means food in any sized package that is manufactured by a single manufacturer, bears the same statement of identity, and has similar methods of preparation. Thus, if a manufacturer makes 1,000,000 units of a ''cola'' for six private label soft drink firms, 1,000,000 must be used as the number of units for each firm for the purposes of deciding whether that firm's ''cola'' is eligible for the small business exemption for the purposes of section 403(q)(5)(E)(i) or 403(q)(5)(E)(ii) of the act. It is important to note that in both of the latter provisions, the statute is talking about ''units of such product [that] were sold in the United States,'' not about the units of such product that were sold in the United States by the person seeking the exemption.

7. Several comments addressed FDA's proposal that, in counting units, a small business must total all units of all of the various sizes in which a food is packaged and all of the ways it is sold unpackaged. These comments claimed that this proposed definition of ''unit'' by the agency basically eliminated the exemption for their firms. Noting that the intent of Congress was to mitigate cost to small businesses, another comment stated that it would be severely damaged if food in any sized package that is manufactured by a single manufacturer, no matter what the brand name, is considered a unit of that food. One comment complained that FDA's interpretation is blind to the cost of changing each label size for low-volume packages, and that it overlooked the congressional intent to mitigate the cost of labeling conversion for small manufacturers. The comment proposed that the first year exemption for small businesses under 300 employees be allowed on all packages under 600,000 units of sales per year provided that printing films are different. Another comment stated that the proposed definition does not take into account exactly what is a ''Package/Label.'' The comment stated that FDA should allow individual, distinct packages of a food product, as defined by the UPC (Universal Product Code) number, to be counted separately in determining exemption eligibility, rather than the proposed combination of all types of products and sizes of packages.

One comment supported the agency's definition of ''units.'' The comment

stated that it would be absurd and contrary to congressional intent to exempt the many identical products made by a private label manufacturer on the theory that each individual brand label was produced at levels below the regulatory maximum.

The agency agrees with the latter comment and finds that the others present suggestions that are contrary to the 1993 amendments. FDA understands the concerns that are being raised by the comments. FDA has no desire to implement the 1993 amendments unfairly, but it is its duty to enforce the law in accordance with its terms.

In the counting of units, it is the definition of ''food product'' that is controlling. That definition states that a food product includes food in any sized package which is manufactured by a single manufacturer or which bears the same brand name. Given that being manufactured by a single manufacturer is alternative to bearing the same brand name, it means that products manufactured by the same manufacturer that do not bear the same brand name would still be considered a single product as long as they meet the other aspects of the definition of ''food product.'' Thus, FDA's definition is fully consistent with the act.

FDA is aware of the various factors that pose economic burdens to small businesses that are identified by these comments, but it still has an obligation to implement the act as written. In the face of the statute, given the use of the words ''in any sized package'' in the definition of ''food product,'' it is apparent that Congress decided not to take into account the additional factors to which the above comments point. Although the agency recognizes that the use of different printing films or different UPC numbers would provide greater economic relief for small businesses, as noted above, FDA is bound by the terms of the act. Neither of these considerations are permitted or even addressed in the 1993 amendments. As explained above, FDA's approach is fully consistent with, and responds to, the act.

8. One comment objected to FDA's definition of a unit for soft drinks as being the individual bottle rather than the case, noting that there might as well not be a small business exemption for their industry.

FDA was well aware of the concern raised by this comment and attempted to address it in the small business exemption proposal. In that proposal, FDA stated that, if the individual cans or bottles of a case or carton were labeled in accordance with the provisions for multiunit packages under § 101.9(j)(15), the case or carton could be treated as a single unit for the purpose of counting units of food product (59 FR 11872 at 11874). To be in compliance with § 101.9(j)(15), the individual can or bottle of a multiunit package must bear the statement ''This Unit Not Labeled For Retail Sale.'' This possibility still exists for producers of soft drinks.

However, as noted in the small business exemption proposal, soft drinks are not normally packaged in this manner, but instead they are packaged in bottles or cans that are amenable to sales either as individual packages or as part of a carton or a case. Historically, consumers have often been able to mix individual flavors of particular soft drinks when purchasing them by the carton or case. Thus, FDA tentatively concluded in the proposal that the total number of individual cans or bottles of a soft drink is controlling for the purpose of counting the number of units sold in the United States.

In considering this comment on how units of soft drinks should be counted, the agency has reviewed its tentative conclusions on this matter. FDA now finds that there is a basis for counting the cases or cartons of cans or bottles of soft drinks as individual units for the purposes of the 1993 amendments. FDA agrees that there may be instances where a case of soft drinks should be considered to represent a unit. In the proposal, FDA stated its tentative finding that the case is a convenience used by the manufacturer to deliver 12 or 24 individual units to the customer. As noted above, this finding was based on the historical practice of the consumer being able to mix units of soft drinks when purchasing a case of 24 bottles. However, upon considering this matter as part of its review of the comment, FDA recognizes that there may be instances where the unit being sold to the consumer is the carton or the case of soft drinks. Such situations would be those where soft drinks are sold in cartons or cases that are sealed or have plastic over-wraps that deter individual sales or mixing of individual cans or bottles in the carton or case. FDA agrees that a firm may count such sealed cartons or cases as individual units for the purpose of a claim under the 1993 amendments, regardless of whether the individual units are labeled in accordance with § 101.9(j)(15), if the firm has evidence of the extent to which its soft drink is sold by the carton or case instead of by the individual can or bottle. FDA notes that if a firm intends to rely upon the provisions of the 1993 amendments to claim an exemption from the requirements of nutrition labeling for one of its products, then it is incumbent upon that firm, for the purpose of reporting the number of units, to have knowledge of how the product is sold to the consumer.

9. Two of the comments stated that FDA should clarify how units should be counted for a product that is not sold in a package. One comment representing foreign firms noted the potential differences in marketing in the United States as compared to another country and the difficulties a foreign firm faces in learning about U.S. marketing practices. The comment suggested that FDA include in the final rule that the counting of units could be based upon a person's reasonable determination of U.S. marketing practices even if that determination deviated somewhat from actual marketing practices in the United States. Another comment requested that FDA clearly set forth in the preamble accompanying the final regulation how this aspect of the ''unit'' definition (i.e., sales of food not in package) will be applied to confectionery and similar items sold individually and priced by weight.

FDA recognizes that estimating the number of units of a product that is sold to consumers in an unpackaged form may be difficult for a firm seeking to submit a notice claiming exemption under the 1993 amendments, particularly for a foreign firm. This is especially true for candies which were mentioned in these two comments. Depending upon the type of candy and its quality, a particular product may be sold at retail by the piece (either because it is expensive or for a low price, such as penny candy); by the half-pound or by the pound; or by the package. In such a case, the candy manufacturer would total the number of units sold by the piece or by the half-pound (or the pound) with those sold in packages to determine the total number of units of candy sold in 12 months. It is incumbent upon the firm that provides an approximation of the number of units of a product sold in the United States as part of a claim for exemption from nutrition labeling under the provisions of the 1993 amendments to have adequate knowledge of the sales of that product in the United States. This knowledge is necessary for the firm to be able to report accurately in its notice claiming exemption the number of units that it sold.

FDA has modified the instructions contained in Appendix II to provide more details on the counting of units of a food that is sold unpackaged. The agency has retained in § 101.9(j)(18) language from the 1993 amendments as

the appropriate description of how to count units of a food that is sold unpackaged. FDA is concerned that to be more specific in the regulations may reduce the degree of flexibility available under the definition of ''unit.'' This definition (section 403(q)(5)(E)(vi)(I) of the act) provides that ''the term 'unit' means the packaging or, if there is no packaging, the form in which a food product is offered for sale to consumers.'' Many foods are sold to the consumer in an unpackaged form, such as by the piece, by the slice, or by a measured amount. Thus, to comply with definition of ''unit,'' a small business would include in its count of units in a notice claiming an exemption under the 1993 amendments both packaged and unpackaged product. The agency provided an example of counting units of unpackaged food products for flour in the proposal (59 FR 11872 at 11874). As stated in the proposal (59 FR 11872 at 11874), the small business should make its determination of the specific ''unit'' to use as a basis for reporting sales of unpackaged food products according to the normal sales practice for that food product in the United States.

E. Definition of ''Food Product''

10. Although some comments commended FDA for its definition of ''similar method of preparation,'' discussed in the preamble of the small business exemption proposal (59 FR 11872 at 11875), some comments asked for further clarification of the definition, in particular as it related to nutritive value. One comment stated that the definition of ''food product'' must be limited to the factors referred to in the 1993 amendments. The comment added that the 1993 amendments link the definition of ''food product'' to the food's statement of identity and neither explicitly nor implicitly permit the use of nutritive value as a factor in distinguishing one food product from another. Other comments, however, encouraged the use of the concept of ''nutritive value.''

One comment stated that FDA should incorporate into the regulation the preamble language that explains the intended meaning of ''similar preparation methods,'' including an explanation of criteria that will allow businesses to determine when the lack of similarity of their products' nutritional profiles is such that they must consider products to be different than each other. One comment stated that products that have the same common or usual name, have identical nutrition profiles, but that are subjected to different scheduled processes because of the size of their container, should be counted as the same product. The comment added that products that are basically the same but have differing names for differing shapes/forms, such as taco shells and chalupa shells, which are both forms of tortilla shells, should be counted as the same product.

Another comment stated that FDA should clarify that variations of a product with formulation differences, such as different flavors, are considered different ''food products'' for purposes of the small business exemption. The comment stated that the preamble to the proposal stated that the term ''similar preparation methods'' included ''all aspects in the manufacture of the food product, from the initial steps of determining the ingredients to be used, i.e., formulation * * *'' (59 FR 11872 at 11875). The comment stated that this statement should be set forth in the final regulatory text itself, along with language to the effect that even minor formulation differences, such as differences in flavor ingredients in some cases, result in two different food products, regardless of whether the formulation differences result in differences in nutrient profiles between the two different food products. The comment noted that for many firms and many products there will be no way of determining whether two similar products have the same nutrient profile without nutrient analyses of each product. The comment added that requiring small businesses to undertake such analyses solely for the purpose of ascertaining whether they qualify for the small business exemption would undermine much of the benefit of the exemption and be contrary to the congressional intent.

After considering the various comments seeking clarification of the term ''similar method of manufacture,'' FDA has decided to adopt the definition for ''food product'' that it proposed. Also, after reviewing the comments, FDA is emphasizing that consideration of nutritive value is not a necessary consideration in the definition of ''similar preparation methods.'' The comments appear to have misinterpreted FDA's intent as it relates to the use of ''nutritive value'' of foods.

Although the legislative history for the 1993 amendments discusses what is meant by ''statement of identity,'' it provides no insight into what factors led Congress to establish ''similar preparation methods'' as the third factor in the definition of ''food product.'' The agency intended that the concept of ''nutritive value'' could be used by firms as an informal guideline in determining whether the manufacturing processes for food products meet the parameter of ''similar preparation method.'' FDA had presumed that firms would be faced with situations where there were minor differences in the method of preparation that would lead them to question whether the food products should be counted as being the same. FDA was stating that a firm could use nutritive value as a determinant in resolving this question. The agency did not mean to imply that if two foods prepared by dissimilar processes were found to have the same nutritive value they should be considered to be the same food product. Further, FDA did not intend that firms should analyze foods to determine nutritional value to determine whether they should be considered to be different foods because to expect firms to do so would be contrary to the intent of the 1993 amendments.

The agency has included an additional discussion in Appendix II concerning the term ''similar preparation methods'' to assist firms that submit notices to FDA under the 1993 amendments. However, the agency is not providing further explanation of the meaning of the term ''similar preparation methods'' in the regulations. FDA is concerned that any attempt to elaborate on a definition of ''similar preparation methods'' would only result in a regulation that is more restrictive than the statutory definition.

FDA agrees with the comment that urged that minor differences in scheduled processes or differences in shapes for the same product should not be considered as resulting in different products. FDA does agree, however, that differences in formula, even differences that involve different flavors, would be sufficient to consider foods having such differences to be different food products.

11. One comment requested that FDA clarify in any final rule that similar foods whose preparation methods result in different nutritional profiles represent only one example of different ''food products'' for exemption eligibility purposes. The comment stated that the agency should make clear that other significant differences in preparation that do not affect nutrient content, such as kosher preparation, can also serve to differentiate ''food products'' for exemption eligibility purposes. The comment also noted that certain such differences, like kosher preparation, but for being symbolically rather than expressly declared in labeling, also would differentiate products in terms of a distinguishing statement of identity (e.g., ''kosher green beans'' as compared to ''green beans''), thereby contravening the second

element of the ''food product'' definition.

As discussed in response to the previous comment, this comment misinterprets the way in which FDA had meant for the concept of nutritive value to be used. FDA had never intended that the concept of nutritional value should be used as a basis for concluding that food products with differing methods of preparation but the same levels of nutrients should be considered the same food product for the purpose of counting units. However, the comment raises the issue of whether both perceived and real differences in the method of preparation should be considered in distinguishing between food products.

A determination of whether real and perceived differences distinguish particular foods can only be made on a case-by-case basis. It is not possible to provide guidelines that would cover every case. FDA believes that real differences, such as differences in formulation or differences in preparation, would be used to distinguish a ''Kosher'' product as a different food product. However, there may be steps in the production of a ''Kosher'' product that would not distinguish it from a nonkosher product; e.g., the comment mentioned rabbi inspection as a step that distinguishes kosher food products from other food products. FDA does not agree that rabbi inspection would be sufficient to result in differing food products for the purposes of the 1993 amendments. As noted above, such distinctions will have to be made on a case by-case-basis.

12. One comment suggested that identically formulated products in different size packages or types of packages should be considered different ''food products'' for purposes of the small business exemption.

This suggested approach is contrary to the wording in the 1993 amendments themselves. The definition of food product states: '' 'food product' means food in any sized package'' (section 403(q)(5)(E)(vi)(II) of the act). This wording makes clear that, for the purpose of counting units of a food product, all of the various sizes and forms in which a food product is sold are to be combined. Thus, FDA cannot modify the definition for ''food product'' in the manner suggested in the comment because to do so would be contrary to the 1993 amendments themselves. (See comment 7 in section II.D. of this document.)

F. Calculation of the Average Number of FTE's

13. Three comments raised questions concerning the proposed provision that the average number of FTE's should be based upon the total number of individuals employed by the firm and by all of its affiliates, both domestic and foreign. Two comments stated that, for the purpose of calculating the average number of FTE's, the employees that are considered should be limited to those of the firm claiming the exemption and not of separately incorporated affiliates. One of the comments contended that including employees of unrelated businesses would severely undermine the purpose and scope of the amendment. The comment stated that a fundamental assumption of the amendment is that each product is an independent ''profit center,'' and, accordingly, nutrition information is only mandated when it is economically feasible given the economies pertaining to the production and sale of an individual food item. Although family owned retail confectioners often are involved in other business enterprises, the comment continued, the size or nature of those outside business interests is irrelevant to whether the retail confectioner can cover the cost of nutrition labeling of a particular item.

One comment stated that, in the explanation of the term ''FTE,'' FDA added a discussion that links this definition with the definition of ''person.'' The comment stated that the effect is to require that the employees of a domestic company be combined with those of an affiliate company regardless of whether their operations are related to sales of food products in the United States. The comment stated that there is nothing in the 1993 amendments that points to or requires this conclusion. The comment argued that the relevant issue is how many employees were employed in the United States, not overseas and not in unrelated positions.

FDA disagrees with the conclusion that is reached in these comments. Each of the above comments raises the same basic argument, that the calculation of the average number of FTE's should be based only on the employees of the company submitting a notice claiming an exemption under the 1993 amendments and then only on those employees involved in the production of the food product for sale in the United States. Although the comments state that nothing in the 1993 amendments supports the approach proposed by FDA, they do not provide specific citations to language in the 1993 amendments or the legislative history of the 1993 amendments that support their conclusions. One comment said that a fundamental assumption of the 1993 amendments is that each product is a ''profit center'' but did not offer a citation to where this assumption is either explicit or implicit in the 1993 amendments. FDA concludes that the approach suggested by the comments is contrary to the clear meaning of the 1993 amendments.

In introducing H.R. 2900 (the bill that became the 1993 amendments), Congressman Waxman stated:

> certain small businesses will have extreme difficulty complying with the NLEA by May 8, 1994. * * * Under the amendments, qualifying businesses will be given 1 to 3 additional years to comply with the NLEA. After May 8, 1997, any business with fewer than 100 employees can qualify for an exemption for any products for which it sells fewer than 100,000 cans or other units per year.

(139 Congressional Record H6358 (August 6, 1993).)

The 1993 amendments state as criteria under which a product would be exempt from the requirements for mandatory nutrition labeling that ''the person who claims for such product an exemption from such paragraphs employed fewer than an average of 100 full-time equivalent employees'' (section 403(q)(5)(E)(i)(II), or 300 or 200 in the cases of subparagraphs I and II or III of section 403(q)(5)(E)(ii) of the act, respectively). In describing the notice to be filed to claim an exemption under the 1993 amendments, section 403(q)(5)(E)(iii) of the act states that the notice shall ''state the average number of full-time equivalent employees such person employed during the 12 months preceding the date such person claims such exemption.'' In providing for the exemption of low-volume food products from nutrition labeling, the 1993 amendments state that ''the term 'person' includes all domestic and foreign affiliates of the corporation'' (section 403(q)(5)(E)(vi)(III) of the act). As noted above, the ''Statement of Explanation'' for H.R. 2900 also explains: ''Section 403(q)(5)(E)(vi)(III) defines person, in the case of a corporation, to include all domestic and foreign affiliates of the corporation. The FDA should consider the regulations issued by the Small Business Administration on this issue.'' FDA is unaware of any further discussion on the calculation of the average number of FTE's in the 1993 amendments or related legislative history. Contrary to what was suggested by one comment, there is no indication that FTE's should only be determined based on those employees that are related to the

production of the food that is the subject of the notice. In fact, the clear implication is to the contrary. Both the 1993 amendments and their legislative history state that the term ''person'' includes both domestic and foreign affiliates.

FDA finds that the above references in the 1993 amendments and their legislative history are unambiguous as to the calculation of the average number of FTE's for a firm or other person submitting notice claiming an exemption under the 1993 amendments. Thus, the notice claiming an exemption must state the average number of FTE's of the firm or person submitting the notice, including the employees of all domestic and all foreign affiliates as defined in 13 CFR 121.410. Further, because neither the 1993 amendments nor their legislative history make a distinction with respect to the business of the affiliates, the average number of FTE's must be reported based on all the employees of all affiliates regardless of the nature of the business of the affiliate. Given the language of the 1993 amendments and their legislative history, FDA finds that no other interpretation of how the average number of FTE's is to be determined is reasonable.

14. One comment stated that the average number of FTE's should be based on actual hours worked in a year, 1,824 (i.e., the time that a person that is actually on the job) instead of the proposed 2,080. The comment provided the following explanation of the derivation of 1,824 hours as the amount of actual hours worked in a year:

> An hourly person paid only for amount of time on the job is on the job only 1,824 hours (2,080–80 annual, -80 sick, -96 for 12 holidays = 1,824 hours). Using 2,080 hours instead of 1,824 would allow a firm to omit the declaration of a ''ninth'' employee for every eight full-time employees.

Another comment stated that FDA should retain its proposed method for determining the number of employees and should maintain the 2,080 hour denominator for the calculation.

There are any number of approaches that FDA could have used to define ''full-time'' for use in calculating the average number of FTE's. For any particular situation, however, each possible denominator might over- or undercount the actual number of persons. For example, a firm may hire large numbers of part-time employees for which it does not provide vacation or sick leave hours. Other firms may have more generous or less generous annual leave provisions. Still other companies may recognize fewer or more holidays. For this reason, FDA tentatively decided to simply take the standard full-time work week established by the Department of Labor, 40 hours, and multiply by the number of weeks in a year, 52, to obtain the number to be used in the denominator for calculating the average number of full-time employees. Although FDA recognizes the concern of the comment that suggested using 1,824 hours as the denominator, the use of 1,824 could result in a hardship to those small businesses that provide less amount of time for leave or holidays per employee than suggested by the comment in that it would lead to an overcounting of employees. The agency concludes that use of 2,080 as the denominator provides an equitable approach for a formula to be used in determining the average number of full-time equivalents and is retaining this value in its regulations.

15. One comment stated that FDA should consider as employees only those persons for whom the small business pays income and social security taxes. The comment stated that the calculation of average number of FTE's should not include all ''individuals that render service'' to a company, which would include lawyers, mail carriers, and accountants that are not under the direct employ of the small business. The comment stated that FDA should narrow the definition of employee, and that, in case of doubt, the approach of the Internal Revenue Service could provide guidance. Another comment stated that FDA should reconsider who it counts as employees to exclude contract distribution personnel. The comment explained that many small businesses use route salesmen to service retail establishments. These route salesmen were described by the comment as independent small businessmen who receive compensation from the manufacturers usually as a percentage of the sales. The comment stated that firms should not be precluded from qualifying for the exemption because they chose this form of distribution for their products.

The small business exemption proposal stated that the average number of FTE's ''shall be determined by dividing the total number of hours of salary paid directly to individuals, or companies that employ those individuals, that render service to the person.'' In proposing the definition in this way, FDA was attempting to ensure that persons calculating the average number of FTE's considered all employees (e.g., all owners, officers, the secretarial staff, and part-time employees) of the firm and not just those that are directly involved full-time in the production and sales of food products. The agency had seen this as a potential problem because some of the early notices submitted to the agency had reported ''0,'' ''Zero,'' or ''None'' as the average number of FTE's.

After reviewing the comments and the language of the proposed definition for an FTE, FDA finds that the explanation for the calculation of the average number of FTE's was overly broad and subject to confusion. For example, FDA agrees that it is not normally necessary to include in the determination of FTE's individuals that perform services for the small business as part of the responsibilities of their employment, such as the mailman, fireman, policeman, or even grocery store clerk. FDA finds that such individuals need not be included in the count of the average number of FTE's unless they work for an affiliate of the firm.

The agency has modified the definition of the term an FTE in § 101.9(j)(18)(vi)(D) to narrow it to refer simply to ''employees'' instead of all individuals that render service to the firm. To ensure that there is no misunderstanding of which employees to count, FDA is also modifying the discussion of the calculation and reporting of the average number in Appendix II to refer to the ''employees of the person and of all of its affiliates.''

G. Small Business Food Labeling Exemption Notice

16. Two comments suggested changes in the model form that the agency included as Appendix I to the proposal. One comment suggested that the agency include a place on the form for the telephone and FAX numbers of the firm. The comment stated that the form or instructions should also contain the address to which the form is to be mailed. The other comment stated that the small business food labeling exemption notice should be modified, printed, and made available to the public. The comment suggested use of a form prepared by the National Association for the Specialty Food Trade, Inc. (NASFT) because it claimed that the NASFT form is less confusing than the one that the agency provided. The comment stated that the model form should make a clear statement referencing the provisions of 18 U.S.C. 1001 that prohibit the submission of false information to the Federal Government. The comment also stated that FDA should make the modified form publicly available.

FDA has modified the form in line with the comments and has included the modified form in Appendix I to this

final rule. The agency contacted the NASFT to gain its agreement that the agency could incorporate parts of NASFT's form into the form supplied by FDA. FDA has modified the form to include spaces for a telephone number and a FAX number. In reviewing notices, FDA has found that use of the telephone is frequently an expeditious way of resolving questions that arise. The agency has also made the address to which the form should be sent more prominent in the instructions.

FDA has also modified the form to include specific spaces for the date that the form was prepared and for the name of a contact person. The agency has found that information on the date of preparation is important to help keep multiple notice submissions separate. The name of a specific contact person for a firm has helped the agency to resolve rapidly questions that have arisen during its review of a notice.

Because it has received numerous inquiries as to whether a form exists for the submission of the notice, FDA is providing a model form in Appendix I of this document, along with instructions for completing it in Appendix II of this document. This model form may be used by firms to claim exemptions. FDA advises, however, that it is not necessary to use this form.

The agency also advises that the small business exemption for a food product will be in effect once a notice has been filed with FDA, even though it may be necessary for the Office of Food Labeling to work with the firm that is filing the notice to address deficiencies in it. Although no action by the agency is required, FDA will attempt to review all notices to ensure that they are complete and to notify companies of the receipt of the notice, and whether additional information needs to be submitted.

FDA is initiating the steps necessary to obtain approval from the Office of Management and Budget (OMB) for printing and distribution of the ''model form'' as an official Government form. OMB approval is required under provisions of the Paperwork Reduction Act of 1995.

17. One comment stated that the section of the notice requesting information on the manufacturer of a product, if it is other than the person claiming the exemption, is irrelevant and should not be required. The comment stated that adding irrelevant information increases the paperwork burden, forces companies to give the Government unnecessary information, and enlarges the scope of the 1993 amendments. The comment suggested that FDA may be asking for the name of the manufacturer because it hopes to exclude from the small business exemption small companies that have product made by a copacker.

The 1993 amendments require that the firm filing a notice provide information on the total number of units that it sold in the United States in the preceding year. As a number of comments stated, and as FDA agrees, a firm can only be held responsible for knowing, and reporting, the number of units that it sold, not the total number of units of a product sold in the United States by all firms that might sell the product. However, as noted above in response to comment 5 in section II.D. of this document, whether a food product is eligible for exemption under the 1993 amendments depends not on the total number of units sold in the United States by the firm claiming the exemption, but it depends on the total number of units sold in the United States by all firms that sold the food product. In the case of a manufacturer or exclusive sales agent, the total number of units sold in the United States may well be the number reported by the firm claiming the exemption. In the case of an own-label distributor, the total number of units sold in the United States may include sales by firms other than the firm claiming the exemption.

FDA has included space in the model form for the listing of the manufacturer, if it is not the person submitting the notice, to enable the agency, if necessary, to identify instances in which the total number of units of a food product sold in the United States might exceed the applicable number for eligibility for exemption under the 1993 amendments. FDA seeks this information not to unfairly harass small businesses, but to ensure that there is a level playing field so that firms are not at a competitive disadvantage. Equally importantly, FDA is seeking the information to ensure that consumers have access to nutritional information on products when they have a right to it.

In its discussion with firms that were preparing notices to claim exemption under the 1993 amendments, FDA has become aware that firms may not always know the identity of the manufacturer of the product, particularly if it is an imported product. If this is the case, FDA is asking the person that submits a notice under the 1993 amendments to identify the firm from which they received the product if he or she is unaware of the identity of the manufacturer of the product.

18. Some comments stated that FDA should allow additional time for firms to submit the notice claiming the exemption. One comment suggested 6 months in view of the short time span between the publication of the proposal and the May 7, 1994, filing date for notices. One comment raised a concern about the requirement that notices be filed by May 7th of each year and the attendant lack of flexibility. Another comment stated that no firm should have to refile for exemption before May 8, 1995.

These comments seem to be based on a belief that FDA has more flexibility in the establishment of the date for filing of the notice claiming an exemption than is actually provided by the 1993 amendments. Most of the concerns raised by these comments have become moot with the passage of time. The concern about the inflexibility of the May 7 date for the submission of notices apparently arose from the agency's statement in the preamble that ''[A]ll notices must be filed by May 7, 1994, for the 12-month period beginning May 8, 1994, the date that the new mandatory labeling regulations become effective'' (59 FR 11872 at 11876). FDA advises that the May 7, 1994, date derives directly from section 403(q)(5)(E)(iii) of the act, which requires that the notice claiming exemption under the 1993 amendments be submitted ''prior to the beginning of the period during which the exemption under subclause (i) or (ii) is to be in effect.'' Thus, May 7 was established as the date for submitting the claim for exemption for the 12-month periods beginning May 8th of 1994, 1995, or 1996. The agency has no authority to change this requirement.

FDA notes that a person is not restricted to the May 7 date for the submission of a notice claiming an exemption under the provisions of section 403(q)(5)(E)(i) of the act. Such a notice may be submitted on any date as long as it is submitted before the beginning of the period during which the exemption is to be in effect.

19. Two comments stated that it should be permissible to submit a claim for an exemption within a reasonable time after the marketing of a new food product has begun.

As noted above, a food is misbranded if it does not bear nutrition labeling and is not exempt under one of the exemptions provided by the 1990 and the 1993 amendments. Because the exemption for a firm's low-volume food products provided by the 1993 amendments is not in effect until the firm has submitted a notice to FDA claiming the exemption (with the exception of firms other than importers that have less than 10 employees and do not sell more than 10,000 units of the

particular food product), a low-volume food product from a small business would be misbranded if marketed without nutrition labeling before the notice claiming exemption has been submitted.

The 1993 amendments do not give FDA the authority to provide for a reasonable time after a product has been marketed for the submission of a notice claiming an exemption under the 1993 amendments. If a firm begins marketing a product without nutrition labeling before submitting such a notice, the product is subject to regulatory action. As noted above, FDA supplies its field personnel and State enforcement agencies with a listing of all firms that have filed notice for exemption under the 1993 amendments. Firms that wait to submit a notice until after they have begun marketing a product run the risk of regulatory action because their name does not appear on that list.

FDA recognizes that many small businesses may not have adequate resources to be aware of all of the requirements for nutrition labeling on their products or for claiming an exemption. Thus, during the past year, FDA has exercised discretion and restraint with respect to firms that have marketed products before having filed the necessary notice claiming exemption. While the agency intends to continue to exercise such restraint, the agency urges firms that expect to market a food product that will not bear nutrition labeling because it is exempt under section 403(q)(5)(E) of the act to notify the agency of this fact before marketing the product.

20. In the small business exemption proposal, FDA described generally the approach that it intended to take to review and verify the various notices that it received from small businesses claiming the exemption for low-volume food products (59 FR 11872 at 11876). The agency asked for comments on this general approach, stating that it might provide in the final rule specific requirements for the verification of notices, including a provision for inspection.

Several comments asked that FDA clarify how it would verify the appropriateness of notices claiming an exemption under the 1993 amendments. Most of these comments stated that a firm should be able to supply the necessary verification by mail. Several comments expressed their belief that no additional recordkeeping requirements should be imposed.

In its review of the approximately 13,000 notices that it has received since enactment of the 1993 amendments, FDA has attempted to follow the general approach to reviewing and verifying notices that it outlined in the proposal. The agency has considered notices to be acceptable, regardless of their format or approach, as long as they supplied the basic information, that is, the name and address of the firm claiming the exemption, an estimate of the number of employees, a listing of the products for which exemption was claimed, including brand names, and the approximate number of units of each of those products sold by the firm in the United States. Although the 1993 amendments do not require review and approval of the claim by FDA for the exemption to be in effect, FDA is briefly reviewing each notice. This review is directed at four areas: (1) Did the notice provide an estimate of the number of employees; (2) did the notice provide the identity of the specific food products for which an exemption was claimed; (3) did the notice provide the approximate number of units of each food product that the firm sold in the United States in the 12 months preceding the period for the exemption; and, (4) based on the information in the notice, did the product appear to be a low-volume food product (e.g., were total annual sales in the United States between May 8, 1993, and May 7, 1994, less than 600,000 units)?

In its review, FDA has used a flexible approach to resolve questions concerning the information contained in the notices. In the first year, for approximately 90 percent of the notices, FDA found the information in the notice itself to be adequate to justify the claimed exemption. In the remainder, where questions arose concerning the notices, FDA used two approaches for resolving questions. If the notice raised a fairly straight-forward question, such as the number of employees because the number was not included in the notice, the agency called the firm by telephone if a telephone number was available and asked that the firm supply the missing information, either over the telephone or by mail. For more complex questions, such as whether the notice included products that did not qualify as low-volume food products, e.g., it listed products bearing brand names for large national corporations, the agency contacted the firm either by telephone or by letter and requested that the firm modify its notice to include only those products that qualified as low-volume food products based on total sales in the United States.

As noted above, the agency found it necessary during the first year under the provisions of the 1993 amendments to ask for verification or additional information for only a small percentage of the notices submitted. Based on its experience to date, FDA finds that there is no need to provide specific requirements in the final rule for the verification of notices. As was stated in the small business exemption proposal, companies should be prepared to provide information to FDA to support their notices of exemption should FDA question the validity of any information contained in those notices (59 FR 11872 at 11876).

21. A number of comments disagreed with the preamble discussion that the 1993 amendments provide FDA access to firms' records for verification of exemption notices and emphasized that FDA should not use the 1993 amendments as a basis for gaining unintended access to records.

Section 403(q)(5)(E)(iii)(IV) of the act provides that the notice shall contain such information as the Secretary of Health and Human Services (the Secretary) may require to verify the information that is required to be in the notice if the Secretary has questioned the validity of such information. In the preamble to the small business exemption proposal, FDA stated that it might provide in the final rule that companies claiming the exemption will be required to permit inspection of supporting documentation. Because it has not had sufficient experience to have developed a clear view of what such an approach would involve, FDA is not including a requirement concerning inspection of records in the regulations set forth below.

Although FDA continues to hold that the use of an inspection is an appropriate means for obtaining verification information, it agrees that section 403(q)(5)(E)(iii)(IV) of the act does not give it free access to all records of a firm. There must be some question about the validity of information in a notice claiming an exemption under section 403(q)(5)(E) of the act for the agency to obtain such access. Secondly, the information sought must have a nexus to: (1) The number of employees of the firm, (2) the number of units of product sold in the United States, and (3) proof that the product is a low-volume food product. Any other review of records is not authorized by the 1993 amendments.

The agency will normally first try to verify the validity of the information, or otherwise resolve the question that arises, by telephone or mail. However, contrary to the assertion of some comments, there is nothing in the 1993 amendments that prohibits FDA from obtaining through inspection the information necessary to verify the validity of information in a notice. It is

FDA's intent only to use an inspection to obtain verifying information if it is the way that is most likely to produce the information necessary to verify the validity of the notice. FDA has yet to resort to inspection of records as an approach to verifying the information in a notice.

22. Several comments stated that the proposed verification process appeared to be burdensome. Some comments stated that any question concerning eligibility could be promptly and efficiently addressed by requesting written verifying information. The comments noted that the 1993 amendments contemplate that firms will be entitled to the exemption simply by claiming it, absent an FDA request for supporting documentation. The comments stated that, if there is a need for supporting documentation to resolve doubt about the propriety of the claimed exemption, FDA may simply demand that the information be provided, or else the exemption will be revoked.

These comments are mistaken in their concern that the proposed verification process is overly burdensome. However, as noted above, until it has more experience in what is necessary to verify the validity of a notice, FDA is not revising the regulations to specify how it will verify the accuracy of notices, or what information is necessary for such verification. As noted above, the agency found it necessary during the first year to ask for verification or additional information for only a small percentage of the notices submitted. FDA agrees with the various comments that supplemental information to verify the validity of a notice should be limited to that information that is already maintained by the firm and should not require the development of new records.

23. A number of comments addressed the requirement for a certification statement as part of the notice. One comment stated that the requirement was burdensome because it would impose business costs and legal liability not contemplated by Congress and not provided for by the amendments. Another comment stated that the certification requirement should be deleted, noting a number of factors that mitigate against the need for the certification statement, including the fact that FDA can request verification, that anybody providing false information commits a punishable criminal offense, and that FDA can declare the product misbranded. One comment stated that a firm should not be put in the position of having to certify that second-hand information, such as the amount of production of a copacker, that it cannot verify, is true and accurate. One comment stated that the certification requirement should be eliminated, particularly the part about notifying FDA when it becomes ineligible, because it exceeds statutory authority provided by the amendments, is contrary to congressional intent, and imposes burdens on small businesses. One comment stated that FDA should clarify that a company would only be at risk of criminal prosecution if it had intentionally and knowingly provided false information.

FDA included the certification statement as a requirement of the notice claiming an exemption under the 1993 amendments as a confirmation to the agency of the expected; that is, that the information being submitted to the agency complied with the requirements of 18 U.S.C. 1001 and contained only valid information. FDA disagrees with the comments that this requirement creates additional liabilities for the firms or is burdensome. Most comments were aware of 18 U.S.C. 1001 and the prohibition that it contains on the submission of false information to a Government agency. This prohibition exists regardless of whether a notice contains a signed certification from the firm.

Moreover, the certification statement serves as the initial verification of the validity of the information in a notice. As evidenced by the tone of some of the comments, firms will take greater care to ensure the validity of the information in a notice if a responsible individual has to certify to the accuracy of the information. FDA notes that some of the forms that it has received that were devised by firms and associations contain more expansive certification statements than that proposed by FDA. Some of these certifications, for example, contained a statement that there was no nutrition information or claims on the label for any of the products included in the notice.

FDA notes that the greatest concern seems to be over the requirement that a firm notify FDA when a product is no longer eligible for the exemption. FDA included this commitment as part of the certification requirement to ensure that the firm is aware of the provision in the 1993 amendments that the firm has 18 months after its product no longer qualifies for the exemption to bring the label into compliance. The requirement that a firm notify FDA if it becomes ineligible for the exemption is thus fully consistent with the act and the agency's authority to adopt regulations for its efficient enforcement. (See section 701(a) of the act.)

The agency emphasizes that it is asking firms to certify the accuracy of the information that they are submitting as it relates to the operations of their firm only. This information should be readily available to the firm in records maintained during the normal course of its business. Contrary to what was stated by one comment, FDA is not asking a firm to certify to information unknown to it such as the volume of sales of a copacker that produces product for the firm.

24. One comment stated that FDA should take pains to explain its plans for protecting confidential business information included in notices.

FDA advises that any trade secret or confidential commercial information submitted in notices is protected by the safeguards against inappropriate release that are provided by the agency's regulations in part 20 (21 CFR part 20) for the release of information under the Freedom of Information Act.

H. Miscellaneous Issues

25. One comment stated that FDA should not single out imports for enforcement of noncompliance.

FDA advises that it has been acting to ensure that there is compliance with the new labeling regulations in as evenhanded a manner as possible with respect to both foreign and domestic firms. The agency initiated its enforcement efforts for domestic products on August 8, 1994, the date after which the nutrition labeling and nutrient content claim requirements of the act became applicable (see Pub. L. 103–261, enacted May 26, 1994). FDA initiated its import enforcement efforts on September 19, 1994. The approach that the agency's district offices take when they encounter a noncompliant label is similar for both domestic product and imported products. Copies of the agency's domestic and import enforcement assignments explaining the approaches being taken have been placed on public display under this docket number.

26. One comment stated that FDA's proposal places too much emphasis on enforcement, and that FDA should maintain a flexible enforcement policy; e.g., a small company whose notice is deficient (or which is found to exceed a ceiling) should be given a complete written explanation of the deficiency and a reasonable time to submit a compliance plan.

FDA has been maintaining a flexible, lenient enforcement policy, particularly as regards companies whose notice is found to be deficient. The first step that the agency takes upon receipt of a notice is to place the name and address of the firm in its computer data base of firms that have filed a notice and to make that

information available to its field offices by entering the information into the PRIME Connection and FIARS computer bulletin boards. As noted above, the agency next issues a letter acknowledging the receipt of the notice, unless it has a question concerning the information in the notice. If there is a deficiency in the information in the notice, or the agency has some other question concerning it, the agency either calls or writes the firm to ask for clarification of the information. During this time, the name and address of the firm remain on the listing of firms that have submitted a notice claiming exemption under the 1993 amendments.

27. One comment stated that the agency should adopt specific procedures to maintain a list of exempt firms and provide effective means of disseminating the list to districts. This action should be taken, the comment said, to minimize the possibility of needless detention of products for which an exemption has been filed. A foreign firm also commented that FDA should adopt a policy that would permit the manufacturer or its importer to include a statement on the particular import documents that it has filed for a particular exemption, and that such a statement should bar the district from detaining the imported product.

Before launching its enforcement efforts for domestic and imported products, FDA developed a computerized data base listing the firms that have submitted a notice claiming an exemption under the 1993 amendments by name and address. As stated above, FDA made this data base available to its district offices and to State enforcement agencies through an FDA computer bulletin board system called ''PRIME Connection.'' A similar data base listing the names and addresses of foreign firms and recognized importers that filed a notice to claim an exemption for their products was made available to FDA's import offices under FDA's FIARS system. FDA has periodically updated these lists since they were established. Additionally, FDA advises that it has recommended that, and has permitted, statements that a particular product qualifies for an exemption under the 1993 amendments be included in the shipping records for an imported product. The presence of such additional information with the shipping records is considered by FDA in determining whether to release a particular import. Because each import must be considered on a case-by-case basis, however, the presence of such a statement will not serve as a de facto bar to detention.

28. Several comments suggested steps that the agency should take to permit the continued use by small businesses of nutrition labeling in compliance with FDA's former provisions for the voluntary nutrition labeling of food. Most of these comments supported the use of § 101.9(g)(9) for small businesses to request, and FDA to grant, alternative approaches that would enable them to use up labeling that used the former type of nutrient labeling. Some comments suggested that FDA should extend the exemption of the 1993 amendments in the proposed regulation for low-volume food products to cover such products.

Other comments stated that FDA should consider establishing a special rule permitting labels with pre-1990 amendments nutrition information to be used by processors that otherwise would qualify for the small business exemption. One comment noted that if it is barred from using labels bearing pre-1990 amendments nutrition information, it will be required to bear an economic loss for these label stocks, which would be extreme for a company of its size. Other comments noted that denying an extension to firms that had voluntarily cooperated in the past would be unjust. Some comments suggested that limits be created on the use of such pre-1990 amendments labeling; e.g., a certification that the labeling was purchased before January 6, 1993, and that compliance with the new requirements will be achieved by the end of the extension period or the next printing whichever comes first; that there are no claims; that there is no competitive advantage from improper listing of serving sizes, calories from fat, saturated fat, cholesterol, and sodium; and that the product was not introduced into the marketplace since the new nutrition labeling regulations were issued (since January 6, 1993).

Since issuance of the small business exemption proposal, FDA has received a number of requests for permission under § 101.9(g)(9) to exhaust inventories of labels containing nutrition information that was in compliance with FDA's regulations that were in effect before the effective date of the 1990 amendments. FDA has required that these requests contain information showing that the firm and the product would be eligible for exemption under the provisions of the 1993 amendments but for the fact that the product's label bears the former nutrition labeling. FDA has also asked that the requests include a copy of the label for each product for which permission was being sought to exhaust the old label, along with an estimate of the remaining inventory of the label stocks and the estimated time required to exhaust the inventory.

Within its limited resources, FDA has reviewed and granted permission to firms to exhaust labels that contain only the former voluntary nutrition information. In granting permission to exhaust inventories of labeling by a specific date, FDA has advised the firms that the label for the product is to be corrected by either removing the old nutrition information or bringing the label into compliance with new § 101.9. FDA has advised firms requesting permission to continue the use of labels containing nutrient content or health claims that such permission would not be granted.

The process provided by § 101.9(g)(9) appears to be adequate to address the issue of granting permission to small businesses to exhaust their stocks of old labeling. Also, FDA notes that it is using most of the ''limits'' suggested by the one comment in evaluating requests for additional time to exhaust inventories of labels under § 101.9(g)(9). However, the suggested limits on granting permission to exhaust labels printed after January 6, 1993, or for products introduced after January 6, 1993, have largely been rendered moot by the passage of time. Thus, FDA concludes that a special rule permitting labels with pre-1990 amendments nutrition information is unnecessary. Also, FDA advises that it does not have authority to extend the exemption provided by the 1993 amendments to cover products bearing pre-1990 amendment nutrition information. Such products are specifically excluded from the exemption by section 403(q)(5)(E(i)(2) and (ii) of the 1993 amendments.

III. Economic Impact

FDA has examined the impacts of this final rule as required by 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 effects; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to analyze options for regulatory relief for small businesses.

The agency reported in the small business exemption proposal its finding that the net effect of this rule is the benefit that it creates by reducing labeling costs for exempted companies. This benefit is the result of statutory provisions and not FDA discretion.

There are two types of costs of this regulation: (1) Costs of lost nutrition benefits because nutrition information is not available and (2) costs to comply with the notification requirement.

FDA has estimated that the volume of food product eligible for exemption constitutes less than one percent of the United States diet, and that any lost nutrition benefits are likely to be small. Also, the agency estimated that in the first year approximately 4,500 firms claiming exemption would file notices at a cost of approximately $1,656,000. The agency estimated that in the following 2 years the number of firms filing notices would reduce to approximately 4,000 at a cost of approximately $1,472,640 and approximately 3,200 at a cost of approximately $1,177,640, respectively. However, in the first year that the 1993 amendments have been in effect, the agency has received approximately 9,000 notices claiming an exemption for one or more low-volume food products. Assuming that the number of firms filing an exemption will decrease for the next 2 years at the same rate as previously estimated, then the costs to comply with the notification requirements are estimated to be approximately $3,312,000 the first year, approximately $2,947,000 the second year, and approximately $2,358,000 in subsequent years as the number of firms filing notices decreases. Federal costs for implementing the notification system are estimated (as in the proposal) to be approximately $207,000. The total costs of notification will be less than $4 million for the first year and decrease substantially in subsequent years.

On the other hand, FDA estimates that the cost savings to small businesses that were exempted from labeling to be between $275 and $360 million. These costs are estimated based on the Regulatory Impact Analysis (RIA) (58 FR 2927, January 6, 1993) done for rules implementing the 1990 amendments. In the RIA, FDA estimated relabeling costs of approximately $3,000 per stock keeping unit (SKU). This rule is expected to save costs for between 90,000 and 120,000 SKU's. Because of this positive effect on the economy, this rule is economically significant under Executive Order 12866, but because the rule will not have any adverse effect on small business, the agency believes that, under the Regulatory Flexibility Act, the rule will not have a significant impact on a substantial number of small entities. However,the preceding discussion of the costs and cost savings to small business would constitute a final regulatory flexibility analysis under the Regulatory Flexibility Act.

None of the comments to the small business exemption proposal presented any information, nor is the agency aware of any information, that would serve as a basis for significantly increasing the estimated costs of this regulation or significantly decreasing the estimated cost savings.

IV. Congressional Review

This final rule has been classified as a major rule subject to congressional review. The effective date is October 7, 1996. If, however, at the conclusion of the congressional review process the effective date has been changed, FDA will publish a document in the Federal Register to establish the actual effective date or to issue a notice of termination of the final rule action.

V. Environmental Impact

The agency has previously considered the environmental effects of the action being taken in this final rule. As announced in the small business exemption proposal published in the Federal Register of March 14, 1994 (59 FR 11872), the agency has determined under 21 CFR 25.24(a)(8) and (a)(11) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. No comments questioned this determination. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act

This final rule contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). This information collection has been approved by OMB for 90 days, under 5 CFR 1320.13 and OMB control No. 0910–0324. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Because OMB approval of this information collection is valid for only 90 days, FDA is also taking the appropriate steps to obtain a regular approval. Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each collection of information. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c). In accordance with 5 CFR part 1320, the title, description, and respondent description of the information requirement are shown below with an estimate of the annual collection and information burden. Included in the estimate is the time for reviewing instructions, gathering necessary information, and completion and submission of the notice.

Title: Food Labeling; Nutrition Labeling, Small Business Exemption.

Description: The final rule provides the procedures for the submission of a notice of a claim by a company for an exemption from FDA's regulations for mandatory nutrition labeling. FDA action on the notice will include review of notices for completeness and acknowledgment that the notice had been received and was or was not adequate. Additionally, FDA will provide to its field personnel and State enforcement agencies a listing of firms that have submitted a notice to FDA along with a listing of the products claimed to be exempt.

The 1993 amendments revise the basis for a small business exemption provided by section 403(q)(5)(E) of the act. This new provision provides an exemption for a food product based on the number of employees and the total number of units sold in the United States on an annual basis. Under the 1993 amendments, to qualify for an exemption, a person must file the notice mentioned in the preceding paragraph with FDA before the time period for the claimed exemption. Sections 101.9(j)(18)(iv) and 101.36(f)(2) reflect the information identified in section 403(q)(5)(E) of the act, as necessary, as part of the notice for a claimed small business exemption.

Descriptions of Respondents: Persons and small businesses, particularly small businesses.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden hours per response	Annual burden hours	Total annual operating and maintenance costs
101.9 and 101.36	10,000	1	8	80,000	$3,312,000

Since enactment of the 1993 amendments, FDA has received notices from approximately 9,000 firms. Although FDA is uncertain how many other firms may take advantage of the exemption provided by the 1993 amendments to file notice, it expects a maximum of 10,000 respondents to file for the exemption. The agency expects that the number of respondents and corresponding annual burden hours will decrease over succeeding years as the basis for the exemption changes. By May 1997, FDA estimates that approximately 5,000 companies may be filing notices to claim the exemption with a corresponding annual burden hours of approximately 40,000 hours. There are no capital costs created by this final rule. As noted above in section III. Economic Impact, FDA estimates that the total operating and maintenance costs to respondents to submit notices to the agency during the first year to be approximately $3,312,000. The agency does not believe that this regulation requires any capital expenditures to comply with the requirements for submitting a notice.

In the small business exemption proposal, FDA requested comments regarding the estimated burden, including suggestions for reducing the burden. Nine responses were received that contained one or more comments concerning the information collection provisions that would be established by the small business exemption proposal. A number of these comments suggested modifications in, or were opposed to, various provisions of the information collection portion of the small business exemption proposal. A summary of the arguments and changes suggested by these latter comments, and the agency's responses, are provided above. None of the comments addressed FDA's estimates of the cost and hour burden associated with the information collection.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, FDA has submitted copies of the final rule to OMB for its review of the recordkeeping requirements. In addition, the agency solicits public comment on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection, techniques, or other forms of information technology (e.g., permitting electronic submission of responses).

Individuals and organizations may submit comments on the information collection requirements of this final rule by October 7, 1996. These comments should be submitted to the Dockets Management Branch (address above).

Under the Paperwork Reduction Act of 1995, persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. This final rule contains information collection requirements that have been submitted to OMB for approval. FDA will publish a notice in the Federal Register of OMB's decision to approve, modify, or disapprove the information collection requirements established in this final rule prior to the effective date of such requirements.

FDA advises that the statutory requirements of the 1993 amendments for the filing of a notice with FDA take precedence over the provisions of the Paperwork Reduction Act of 1995. Thus, if small businesses desire to avail themselves of the exemption from nutrition labeling that is provided by the 1993 amendments, they must file notice with FDA as required by section 403(q)(5)(e)(i)(III) or (q)(5)(e)(ii) of the act. Products that are not the subject of such notice will be misbranded unless they bear nutrition labeling as required by section 403(q) of the act regardless of whether OMB has approved the information requirements included in this final rule.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.9 is amended by revising paragraph (j)(1)(i) and by adding new paragraph (j)(18) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(j) * * *

(1)(i) Food offered for sale by a person who makes direct sales to consumers (e.g., a retailer) who has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers of not more than $50,000, *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section.

* * * * *

(18) Food products that are low-volume (that is, they meet the requirements for units sold in paragraphs (j)(18)(i) or (j)(18)(ii) of this section); that, except as provided in paragraph (j)(18)(iv) of this section, are the subject of a claim for an exemption that provides the information required under paragraph (j)(18)(iv) of this section, that is filed before the beginning of the time period for which the exemption is claimed, and that is filed by a person, whether it is the manufacturer, packer, or distributor, that qualifies to claim the exemption under the requirements for average full-time equivalent employees in paragraphs (j)(18)(i) or (j)(18)(ii) of this section; and whose labels, labeling, and advertising do not provide nutrition information or make a nutrient content or health claim.

(i) For food products first introduced into interstate commerce before May 8, 1994, the product shall be exempt for the period:

(A) Between May 8, 1995, and May 7, 1996, if, for the period between May 8, 1994, and May 7, 1995, the person claiming the exemption employed fewer than an average of 300 full-time equivalent employees and fewer than 400,000 units of that product were sold in the United States; and

(B) Between May 8, 1996, and May 7, 1997, if for the period between May 8, 1995, and May 7, 1996, the person claiming the exemption employed fewer than an average of 200 full-time equivalent employees and fewer than 200,000 units of that product were sold in the United States.

(ii) For all other food products, the product shall be eligible for an exemption for any 12-month period if, for the preceding 12 months, the person claiming the exemption employed fewer than an average of 100 full-time equivalent employees and fewer than 100,000 units of that product were sold in the United States, or in the case of a food product that was not sold in the 12-month period preceding the period

for which exemption is claimed, fewer than 100,000 units of such product are reasonably anticipated to be sold in the United States during the period for which exemption is claimed.

(iii) If a person claims an exemption under paragraphs (j)(18)(i) or (j)(18)(ii) of this section for a food product and then, during the period of such exemption, the number of full-time equivalent employees of such person exceeds the appropriate number, or the number of food products sold in the United States exceeds the appropriate number, or, if at the end of the period of such exemption, the food product no longer qualifies for an exemption under the provisions of paragraphs (j)(18)(i) or (j)(18)(ii) of this section, such person shall have 18 months from the date that the product was no longer qualified as a low-volume product of a small business to comply with this section.

(iv) A notice shall be filed with the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204 and contain the following information, except that if the person is not an importer and has fewer than 10 full-time equivalent employees, that person does not have to file a notice for any food product with annual sales of fewer than 10,000 total units:

(A) Name and address of person requesting exemption. This should include a telephone number or FAX number that can be used to contact the person along with the name of a specific contact;

(B) Names of the food products (including the various brand names) for which exemption is claimed;

(C) Name and address of the manufacturer, distributor, or importer of the food product for which an exemption is claimed, if different than the person that is claiming the exemption;

(D) The number of full-time equivalent employees. Provide the average number of full-time equivalent individuals employed by the person and its affiliates for the 12 months preceding the period for which a small business exemption is claimed for a product. The average number of full-time equivalent employees is to be determined by dividing the total number of hours of salary or wages paid to employees of the person and its affiliates by the number of hours of work in a year, 2,080 hours (i.e., 40 hours×52 weeks);

(E) Approximate total number of units of the food product sold by the person in the United States in the 12-month period preceding that for which a small business exemption is claimed. Provide the approximate total number of units sold, or expected to be sold, in a 12-month period for each product for which an exemption is claimed. For products that have been in production for 1 year or more prior to the period for which exemption is claimed, the 12-month period is the period immediately preceding the period for which an exemption is claimed. For other products, the 12-month period is the period for which an exemption is claimed; and

(F) The notice shall be signed by a responsible individual for the person who can certify the accuracy of the information presented in the notice. The individual shall certify that the information contained in the notice is a complete and accurate statement of the average number of full-time equivalent employees of this person and its affiliates and of the number of units of the product for which an exemption is claimed sold by the person. The individual shall also state that should the average number of full-time equivalent employees or the number of units of food products sold in the United States by the person exceed the applicable numbers for the time period for which exemption is claimed, the person will notify FDA of that fact and the date on which the number of employees or the number of products sold exceeded the standard.

(v) FDA may by regulation lower the employee or units of food products requirements of paragraph (j)(18)(ii) of this section for any food product first introduced into interstate commerce after May 8, 2002, if the agency determines that the cost of compliance with such lower requirement will not place an undue burden on persons subject to it.

(vi) For the purposes of this paragraph, the following definitions apply:

(A) *Unit* means the packaging or, if there is no packaging, the form in which a food product is offered for sale to consumers.

(B) *Food product* means food in any sized package which is manufactured by a single manufacturer or which bears the same brand name, which bears the same statement of identity, and which has similar preparation methods.

(C) *Person* means all domestic and foreign affiliates, as defined in 13 CFR 121.401, of the corporation, in the case of a corporation, and all affiliates, as defined in 13 CFR 121.401, of a firm or other entity, when referring to a firm or other entity that is not a corporation.

(D) *Full-time equivalent employee* means all individuals employed by the person claiming the exemption. This number shall be determined by dividing the total number of hours of salary or wages paid directly to employees of the person and of all of its affiliates by the number of hours of work in a year, 2,080 hours (i.e., 40 hours×52 weeks).

3. Section 101.36 is amended by revising paragraph (f) to read as follows:

§ 101.36 Nutrition labeling of dietary supplements of vitamins and minerals.

* * * * *

(f) Dietary supplements are subject to the exemptions specified as follows in:

(1) Section 101.9(j)(1) for dietary supplements that are offered for sale by a person who makes direct sales to consumers (i.e., a retailer) who has annual gross sales or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers of not more than $50,000, and whose labels, labeling, and advertising do not provide nutrition information or make a nutrient content or health claim; or

(2) Section 101.9(j)(18) for dietary supplements that are low-volume products (that is, they meet the requirements for units sold in § 101.9(j)(18)(i) or (j)(18)(ii)); that, except as provided in § 101.9(j)(18)(iv), are the subject of a claim for an exemption that provides the information required under § 101.9(j)(18)(iv); that is filed before the beginning of the time period for which the exemption is claimed; and that is filed by a person that qualifies to claim the exemption under the requirements for average full-time equivalent employees in § 101.9(j)(18)(i) or (j)(18)(ii); and whose labels, labeling, or advertising do not provide nutrition information or make a nutrient content or health claim.

* * * * *

Dated: April 4, 1996.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

Note: The following Appendixes will not appear in the annual Code of Federal Regulations.

Appendix I—Model Small Business Food

Labeling Exemption Notice

(Please type or clearly print)

1. Name of firm

_____

2. Address of firm:

Street address _____

_____

City State _____

Zip or postal code _____

Country _____

Telephone _____
FAX _____

3. Type of firm (Check all that apply)

Manufacturer _____
Packer/Repacker _____
Distributor _____
Importer _____
Retailer _____

4. Twelve-month time period for which you are claiming exemption

FROM: ____ / ____ / ____
MM DD YY

TO: ____ / ____ / ____
MM DD YY

5. Average number of full-time equivalent employees for 12-month period_____

6. Report of units sold (use continuation sheets if necessary)

Product

_____
_____
_____
_____

No. of units

_____
_____
_____
_____

Manufacturer

_____
_____
_____
_____

7. Name and address of manufacturer(s) or distributor(s) of product(s) in Item 6 if different from firm claiming exemption. (Use continuation sheets if necessary.)

B Name of manufacturer or distributor

_____

Address _____

_____

C Name of manufacturer or distributor

Address _____

_____

8. Contact person

_____

9. The undersigned certifies that the above information is a true and accurate representation of the operations of _____ (Name of firm). The undersigned will notify the Office of Food Labeling of the date on which the average number of full-time equivalent employees or the number of units of food products sold in the United States exceeds the applicable number for exemption which is being claimed herein.

Signature _____
Name (Type or clearly print) _____

_____

Title _____
Date _____

Appendix II—Model Small Business Food

Labeling Exemption Notice

Instructions for completion

(Please type or clearly print)

1. Name of firm: Enter the recognized legal name of your firm.

2. Firm address: Enter the mailing address for the principal location of your firm. Also, provide the telephone and FAX numbers.

3. Type of firm: Place a check mark or ''x'' in each block that is applicable to your firm. For example, if your firm manufactures all products that it sells place a check mark after ''Manufacturer.'' If your firm also distributes a product that is manufactured by another firm, also place a check mark after ''Distributor.''

4. Twelve-month time period for which you are claiming exemption: Enter the specific time period for which you are requesting exemption for your products. For products initially introduced into interstate commerce before May 8, 1994, this time period will be from May 8 of the current year to May 7 of next year: e.g., ''FROM 05/08/95 TO 05/07/96.'' For new products, the time period should start with the date on which sales in the United States are expected to begin: e.g., ''FROM 11/01//95 TO 10/31/96.''

5. Average number of full-time equivalent employees for 12-month period: Enter the average number of full-time equivalent employees of your firm and of all of its affiliates for the year preceding the year for which an exemption is claimed under Item 4. The average number should include all employees of your firm and of its affiliates (e.g., owners; officers; and all other personnel such as secretarial, production, and distribution employees). Firms are affiliates of each other when, either directly or indirectly: (1) One firm has the power to control the other, (2) a third party controls or has the power to control both, or (3) an identity of interest exists such that affiliation may be found.

The average number of full-time equivalent employees is to be determined by using the following formula: Total number of employee/hours paid divided by 2,080 hours = average number of full-time equivalent employees. For example, 254,998 paid employee/hours ÷ 2,080 = 122. If the total number of actual employees for your firm and its affiliates is less than 100, you may enter the total number of actual employees instead of calculating the average number of full-time employees; e.g., if your firm has 24 employees that work full-time and 12 employees that work part-time, you may report 36 total actual employees instead of calculating the average number of full-time equivalent employees.

6. Report of units sold (Continuation sheets using the same format for Item 6 may be used if necessary):

Product: Under the column for product, enter the name, including the brand name, for each food product for which your firm is claiming an exemption. A food product is a food in any sized package which is manufactured by a single manufacturer or which bears the same brand name; which bears the same statement of identity; and which has a similar preparation method. In considering whether food products have similar preparation methods, consider all steps that go into the preparation of the food products, from the initial formulation steps to any finishing steps; for example, products having differing ingredients would be considered different food products and counted separately in determining the number of units.

No. of Units: Provide the approximate sales of your firm, in terms of units, for the product for the year immediately preceding the time period for the exemption entered under Item 4. For example, if the time period for which you are claiming exemption for a food product is May 8, 1996, to May 7, 1997, provide an approximation of your sales of that product from May 8, 1995, to May 7, 1996. If the product was not sold for the entire 12 months preceding the time period for the exemption entered under Item 4, provide an approximation of the sales expected to be made during the time period in Item 4. For example, if the time period being claimed in Item 4 is November 1, 1995, to October 31, 1996, for a product that is going to be sold beginning November 5, 1995, provide an approximation of sales for the period from November 1, 1995, to October 31, 1996.

The approximate total number of units is the summation of the number of units of the various package sizes of the food product in the form in which it is sold to consumers; for example, the total of all 2-pound bags of flour plus all 5-pound bags of flour plus all 10-pound bags of flour should be provided as the number of units sold by your firm in the United States. There may also be occasions where a food is sold in bulk or by individual pieces rather than in packaging; e.g., flour may be sold in bulk displays at grocery stores. In such a case, the number of units should be determined on the basis of the typical sales practice for the specific food product; e.g., if 2,000 pounds of flour are sold from bulk displays at grocery stores, and the typical practice for sales to consumers is to price the flour on a per pound basis, then the bulk sales would represent 2,000 units. If the firm sells the same product in package form, then the bulk sales, 2,000 units in the above example, should be added to the sum of the number of packages of the flour sold to determine the total number of units of flour sold by the firm in the United States.

Manufacturer: Under the column designated ''Manufacturer'' enter the letter that corresponds with the name of the manufacturer of the product. The letter ''A'' is used to designate the firm submitting the notice if it is the manufacturer of the product. If the firm submitting the notice is not the manufacturer of the product, use the letter from Item 7 (B or C), or from the continuation sheets for Item 7, that corresponds to the name and address of the manufacturer of the product.

7. Name and address of manufacturer(s) or distributor(s) of product(s) in Item 6 if different from firm claiming exemption: Continuation sheets may be used if necessary. Provide the name and addresses of the manufacturers of the food products for which exemption is being claimed if they are different from the firm claiming the exemption. If the name of the manufacturer is unknown, provide the name of the firm from which the product is purchased. Insert the letter corresponding to the name of the manufacturer (''A'' corresponds to the firm submitting the notice) or distributor in the appropriate block for the name of the product under Item 6.

8. Contact person: Enter the name of a person that can act as a contact for your firm if any questions arise concerning the information included in the notice.

9. Certification: The form is to be signed by a responsible individual for the firm that can certify to the authenticity of the information presented on the form. The individual signing the form will commit to notify the Office of Food Labeling when the numbers of full-time equivalent employees or total numbers of units of products sold in the United States exceed the applicable number for an exemption.

The completed form should be mailed to: Office of Food Labeling (HFS–150), Food and Drug Administration, 200 C St., SW, Washington, DC 20204. Questions concerning a claim may be directed to the Office of Food Labeling at the above address or to 202–205–4561.

[FR Doc. 96–20075 Filed 8–6–96; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1309, 1310 and 1313

[DEA–138F]

RIN 1117–AA32

Removal of Exemption for Certain Pseudoephedrine Products Marketed Under the Federal Food, Drug, and Cosmetic Act (FD&C Act)

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to remove the exemption for certain products containing pseudoephedrine (which are lawfully marketed under the Federal Food, Drug, and Cosmetic Act) from the regulatory chemical control provisions of the Controlled Substances Act (CSA) and the Controlled Substances Import and Export Act. This rule finalizes a Notice of Proposed Rulemaking (NPRM) published in the Federal Register on October 31, 1995 (60 FR 55348).

Due to the large scale utilization of over-the-counter (OTC) pseudoephedrine products for the clandestine manufacture of controlled substances, the DEA has determined that certain products should be subject to recordkeeping, reporting, registration and notification requirements of the CSA to prevent their diversion. Such products include OTC tablets, capsules and powder packets containing pseudoephedrine alone or in combination with antihistamines, guaifenesin or dextromethorphan. This action also reduces the threshold for pseudoephedrine to 48.0 grams pseudoephedrine base. Such a threshold is sufficient to permit the purchase of up to a 244 day supply of OTC pseudoephedrine drug products without the application of regulatory requirements. In addition, the cumulative threshold requirement for multiple transactions of pseudoephedrine drug products in a calendar month will not apply to sales for personal use. To further ensure the availability of pseudoephedrine products to legitimate consumers at the retail level, this action also waives the registration requirement for retail distributors of regulated pseudoephedrine products.

EFFECTIVE DATES: October 7, 1996. Persons seeking registration must apply on or before November 20, 1996, in order to continue to distribute, import or export pseudoephedrine products for which registration is required pending final action by the DEA on their application.

FOR FURTHER INFORMATION CONTACT: Howard McClain Jr., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537. Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION: On October 31, 1995, the DEA published a Notice of Proposed Rulemaking (NPRM) which proposed the removal of the exemption for certain over-the-counter (OTC) pseudoephedrine products from the chemical control provisions of the Controlled Substances Act (CSA). The NPRM documented the increasing problem of OTC product diversion for use as precursor material in the clandestine production of methamphetamine.

The clandestine manufacture and distribution of methamphetamine are serious national public health problems which require Federal action. Methamphetamine, a Schedule II Controlled Substance, is the most prevalent controlled substance clandestinely synthesized in the United States. Between January 1, 1994 and December 31, 1995, the DEA has been involved in the domestic seizure of 587 methamphetamine laboratories. Ephedrine and/or pseudoephedrine were utilized as the precursor material at the vast majority of these laboratories.

The significance of the abuse of methamphetamine is well known and documented. In recent years the problem has increased dramatically. In 1994. alone, there were over 700 methamphetamine related deaths in the United States.

The DEA monitors Medical Examiner (ME) data from approximately 42 medical examiners located in major cities in the contiguous 48 states. Nationally, ME reported deaths related to methamphetamine increased 145% from 1992 to 1994 and there were 1816 deaths for the period 1991 to 1994. In addition, methamphetamine emergency room episodes increased significantly in 1993 and 1994. Current data indicate the illicit production, distribution and abuse of methamphetamine remain a serious problem.

In addition, evidence of the illicit utilization of pseudoephedrine in clandestine laboratories is increasing. The identification of OTC pseudoephedrine products at clandestine methamphetamine laboratories increased dramatically in 1995.

The NPRM documented that pseudoephedrine was utilized in 22 percent of the laboratories seized from January 1, 1995 through September 1995. DEA thereby acted to place regulatory controls on these products in an effort to further minimize the availability of widely used precursor material and ultimately protect the public health. Since publication of the NPRM, the extent of diversion of OTC pseudoephedrine products has intensified in the United States. End of year data for 1995 indicates that at least 28 percent of the clandestine methamphetamine laboratories seized utilized pseudoephedrine.

In recent years, the diversion of OTC products has been the predominant source of precursor material for the clandestine synthesis of methamphetamine. As regulatory controls were implemented to counter the diversion of specific types of OTC products, clandestine laboratory operators have been successful in circumventing these controls to obtain precursor material through the diversion of millions of OTC dosage units of exempt products. The NPRM documents the progression of the diversion from bulk ephedrine, to single entity OTC ephedrine products, to OTC ephedrine combination products and OTC pseudoephedrine products.

As stated in the NPRM, since 1989 ephedrine has been the primary precursor used in the clandestine synthesis of methamphetamine in the United States. Clandestine laboratory operators exploited the lack of control on OTC ephedrine products (such as tablets/capsules) to purchase millions of dosage units for the synthesis of methamphetamine and methcathinone.

The Domestic Chemical Diversion Control Act (DCDCA) of 1993 (Pub. L. 103–200) became effective on April 16, 1994. This Act further amended the CSA and the Controlled Substances Import and Export Act and removed the exemption for those transactions involving products which are marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act, if these products contain ephedrine (or its salts, optical isomers, or salts of optical isomers) as the only active medicinal ingredient or contain ephedrine in combination with therapeutically insignificant quantities of another active medicinal ingredient. Thus, single entity ephedrine products became subject to registration, reporting, recordkeeping and notification requirements of the CSA. The DCDCA, however, did not remove the exemption provided for pseudoephedrine OTC products, since the known illicit use of pseudoephedrine was relatively infrequent when the DCDCA was enacted.

The DCDCA also provided the Attorney General with the authority (21 U.S.C. 814) to remove the exemption for any drug product containing a listed chemical upon a determination that the drug product is being diverted for use in the illicit production of a controlled substance. In addition, the DCDCA imposed registration requirements for List I chemical distributors, importers and exporters.

The Chemical Diversion and Trafficking Act (CDTA) established a system of thresholds for each listed chemical to determine which transactions would be subject to regulatory controls. Reporting, recordkeeping and notification requirements apply to all regulated transactions which meet or exceed these threshold amounts of a listed chemical. The threshold for ephedrine was originally established as 1.0 kilogram for domestic, import and export transactions. The threshold of 1.0 kilogram of ephedrine base is equivalent to greater than 48,800 ephedrine 25 mg dosage units. Even though the dosage form exemption was eliminated by the DCDCA, a 1.0 kilogram threshold was not adequate to prevent the significant diversion of ephedrine to clandestine laboratories in the United States.

Given evidence of the large-scale diversion of ephedrine from various types of outlets and the public health threat imposed by the diversion of these products, the DEA determined that additional action was needed to prevent further diversion. Effective November 10, 1994, (59 FR 51365) the DEA eliminated the threshold for ephedrine. Subsequently, all regulated transactions of ephedrine became subject to reporting recordkeeping and notification requirements of the CSA regardless of size.

In response to regulatory and other actions taken against single-entity ephedrine products, clandestine laboratory operators have again attempted to circumvent CSA chemical controls in an effort to obtain precursor material. The search for unregulated sources of precursor material has led to the diversion and illicit utilization of OTC ephedrine combination products and OTC pseudoephedrine products. The DEA is currently reviewing the regulatory options which address the diversion of OTC ephedrine combination products. This issue will be addressed in the near future.

Pseudoephedrine and ephedrine are related as disastereomers. Because of this structural relationship, pseudoephedrine can serve as a direct substitute for ephedrine in the synthesis of methamphetamine. Clandestine laboratory operators are exploiting the lack of regulatory controls on OTC pseudoephedrine products by obtaining pseudoephedrine for use as precursor material for the synthesis of controlled substances.

The DEA is aware of the large scale legitimate use of OTC pseudoephedrine products and their widespread distribution. However, the DEA believes that the registration, recordkeeping, reporting and notification requirements that have been successfully used to limit the diversion of other chemicals to clandestine laboratories are needed for some pseudoephedrine products to control this problem.

The DEA has documented both mail order and retail diversion of OTC pseudoephedrine products for use in the clandestine production of methamphetamine. In proposing these regulations the DEA has specifically attempted to target both sources of the problem. In order for such regulatory action to be effective, it should include provisions which directly target the problem of indiscriminate distribution of wholesale level quantities by retail, mail order and wholesale distributors.

While there is an urgent need to counter the diversion of OTC pseudoephedrine products for the clandestine production of methamphetamine, these regulations go to extreme lengths to protect the availability of these pseudoephedrine decongestant products for legitimate medical use. While all mail order and wholesale distributors will be subject to the full extent of CSA chemical regulatory controls, specific exemptions and waivers have been provided for retail distributors selling personal use quantities so that these retail distributors are not adversely impacted.

In writing the NPRM, the DEA proposed the inclusion of four provisions which would eliminate potentially burdensome requirements for practically all of the estimated 750,000 retail distributors who would be impacted if pseudoephedrine products were made subject to the full extent of the CSA chemical provision established by law. First, the DEA has provided a waiver from registration for these distributors. Secondly, the DEA has limited controls to a specific group of products. Thirdly, the NPRM proposed the establishment of a threshold of 24.0 grams pseudoephedrine base and therefore would allow for the purchase and sale of up to a 120 day supply of pseudoephedrine for personal legitimate medical use, without the application of regulatory requirements. In this final rule, this threshold has been increased to 48.0 grams. Such a threshold would allow for the purchase and sale of up to a 244 day supply of pseudoephedrine without the application of regulatory requirements. (A 244 day supply of pseudoephedrine at the maximum recommended FDA dosage of 240 mg/day would be 976 pseudoephedrine 60 mg tablets.) Lastly, the proposal specifies that the threshold quantity applies only to a single transaction. Therefore no cumulative threshold for multiple transactions applies to OTC pseudoephedrine transactions and there is no requirement to record each transaction as long as the individual transaction is below the threshold quantity.

Because of these provisions, no retail distributor will be required to register or maintain records as long as they distribute only below-threshold quantities in a single transaction. A retail distributor will only be required to reports suspicious regulated transactions to the DEA as per 21 CFR 1310.05.

Public Comments

Interested parties were provided with 60 days in which to comment on the proposed regulations. The DEA received a total of 17 comments. While the general tone of the comments was supportive of the need to counter the clandestine production of controlled substances such as methamphetamine, the commentors raised a number of concerns regarding specific provisions of the proposed regulation as follows:

(1) Five commentors requested that the comment period be extended. The

DEA responded that the 60 day comment period provided for in the NPRM was adequate and provided sufficient time for comments. Therefore the requests for extension were denied.

(2) In response to the NPRM, the National Association of Boards of Pharmacy (NABP) submitted a letter of strong support for the proposed regulations. NABP wrote that a nationwide Federal effort, under the auspices of DEA, was necessary to deal with the diversion of such OTC products and accordingly NABP supports the present effort to bring the diversion of drug products containing pseudoephedrine under control.

(3) Numerous commentors expressed concern that the term ''threshold quantity'' is not defined and that it is not clear in the NPRM whether the threshold is calculated on a single transaction or on a cumulative total of multiple purchases during a calendar month. These commentors stated that the proposed rule will affect the availability of pseudoephedrine products and retail distributors will be severely impacted by this proposal if a cumulative threshold applies. Commentors also expressed concerns that in order to ensure that a cumulative threshold was not exceeded during a calendar month, retailers would have to place non-exempt pseudoephedrine products behind the counter (thus creating a third class of drug products), maintain records of each and every transaction, register with the DEA and potentially pay large fines in the event that the cumulative threshold was exceeded. Several commentors stated that under such regulatory requirements they feared that retailers would cease to carry non-exempt pseudoephedrine products and these products would be placed at a competitive disadvantage. Commentors also stated that most of the distributors will not be able to afford or simply will not pay the registration fees and increased costs of paperwork associated with DEA registration or recordkeeping.

These commentors misread the proposal which states that the sale of non-exempt pseudoephedrine products in quantities below 24.0 grams pseudoephedrine base applies to a single transaction. The phrase ''in a single transaction'' was specifically included in § 1309.28 (Exemption for retail distributors) which states that the sale for personal use means the sale of below-threshold quantities in a single transaction to an individual for legitimate medical use. The cumulative threshold requirements for multiple transactions of pseudoephedrine products within a calendar month will not apply to sales for personal use. Therefore, the DEA reemphasizes that retail sales of personal use quantities for legitimate medical use in a single transaction will *not* require (1) The placement of these pseudoephedrine products behind the counter, (2) maintenance of records for each transaction, or (3) registration with the DEA. In order to further clarify that the cumulative threshold requirements for multiple transactions of pseudoephedrine products within a calendar month will not apply to sales for personal use, §§ 1309.28 and 1310.04 have been modified accordingly. In addition, § 1309.71 has been modified to reflect that the requirement that certain drug products to be stocked behind a counter where only employees have access does not apply to drugs containing List I chemicals that are regulated pursuant to § 1310.01(f)(1)(iv)(A)(*2*).

(4) Several commentors stated that the NPRM does not present sufficient evidence of the scope, duration and significance of OTC pseudoephedrine diversion to justify the proposed action.

The NPRM addresses each of these issues and includes a thorough discussion of the evolution and extent of the diversion of OTC drug products as precursor material for the clandestine synthesis of methamphetamine in the United States. The NPRM also describes actions taken to counter such diversion and specifically outlines steps taken by clandestine laboratory chemist to circumvent controls implemented at the Federal level.

On October 31, 1995, the DEA published the NPRM in an attempt to counter the growing problem of pseudoephedrine diversion and thereby protect the public health and safety. This NPRM notes that (as of the date of publication) 22 percent of the methamphetamine laboratories seized in 1995 in the United States utilized pseudoephedrine as the precursor material. In addition, the NPRM documents specific increases in the percentage of clandestine methamphetamine laboratories using pseudoephedrine as precursor material between 1994 and 1995.

Since publication of the NPRM, all indicators show clear evidence that the scope of the diversion of pseudoephedrine for the clandestine synthesis of methamphetamine continues to grow.

Current data indicates that the DEA was involved in the seizure of 327 methamphetamine laboratories in calendar year 1995 and that at least 28 percent of these laboratories utilized pseudoephedrine as the precursor material. Smuggling of bulk powder has not been shown to be a significant source of pseudoephedrine for use at these laboratories and investigative data indicates that essentially all pseudoephedrine utilized involved the diversion of OTC pseudoephedrine products.

In regard to the significance of the problem, the adverse impact of methamphetamine abuse in the United States is clear. The NPRM clearly documents that the production of methamphetamine is the United States' most significant clandestine laboratory problem.

Nationally, over 700 methamphetamine related deaths were documented in the United States in 1994. In addition, there is substantial evidence that the abuse of methamphetamine is associated with violent behavior and criminal activity. Coupled with the public health and safety consequences from the abuse of methamphetamine, the extensive use of pseudoephedrine as precursor material (in 28 percent of 1995 seized laboratories) provides overwhelming support for the need to control OTC pseudoephedrine products in a manner which prevents their use as precursor material while permitting the unencumbered sale for legitimate use. In proposing these pseudoephedrine regulations, the DEA acted in a timely manner to counter a growing public health and safety problem. The increase in seizures of methamphetamine laboratories utilizing pseudoephedrine further justifies the proposed regulations.

(5) Two commentors stated that the exemption for retail distributors arbitrarily discriminates against other legitimate distributors who provide consumers with convenience and savings of shopping at home (such as mail order distributors). One of these commentors further stated that the registration exemption is being provided to businesses (such as retail distributors) which have the least ability to monitor sales. In contrast, however, several commentors stated the converse. Specifically these commentors stated that the DEA should restrict its efforts to target mail order distribution and not impact retail distribution activity.

The issue pertaining to the exclusion of mail order activities from the definition of retail distributor was addressed in the June 22, 1995, Federal Register Notice (60 FR 32447) which implemented provisions of the DCDCA. As stated in that notice, it has been DEA's experience that mail order distributors deal with both individuals and businesses, the volume of product

sales can be quite large, and such firms are often less readily able to positively identify their customers. In addition, investigations will be significantly more complex and time consuming for a mail order distributor than a retail distributor. It is therefore appropriate that mail order activities not be provided the same waiver as retail distributors.

In addition several commentors stated that the DEA has no evidence of retail diversion and instead should target the source of the problem such as mail order distributors. In response to these comments, the DEA has documented both mail order and retail diversion of OTC pseudoephedrine products for use in the clandestine production of methamphetamine. In implementing these regulations the DEA is specifically attempting to target both sources of the problem. In order for such regulatory action to be effective, it should include provisions which directly target the problem of indiscriminate distribution of wholesale level quantities by retail, mail order and wholesale distributors.

While all mail order and wholesale distributors will be subject to the full extent of CSA chemical regulatory controls, specific exemptions and waivers have been provided for retail distributors selling personal use quantities. However, the regulation will affect large sales of non-exempt pseudoephedrine products by retail distributors. The following are several anecdotal examples of the diversion of pseudoephedrine which illustrate the need for regulating large purchases of pseudoephedrine that are not consistent with personal use quantities at all levels of distribution.

The following are several examples of retail diversion: DEA has documented that individuals have successfully solicited pharmacists to order and sell excessive quantities of 60 mg pseudoephedrine OTC tablets. The DEA was initially notified by a pharmacist employee of a large chain pharmacy of an excessive pseudoephedrine purchase. DEA met with the pharmacist and was informed that the purchaser initially requested 300 pseudoephedrine 60 mg tablets but gradually increased his request to 10,000 pseudoephedrine 60 mg tablets. The pharmacist subsequently ordered and received the 10,000 tablets which the individual picked up and paid for in cash. The individual then requested a second order be placed for 50,000 pseudoephedrine 60 mg tablets which the pharmacist ordered and received. When the individual telephoned to inquire whether the order had been received, the pharmacist further questioned the individual about the intended purpose. After this phone conversation, however, the individual neither picked up his order or called the pharmacy again. DEA then conducted a random survey of other pharmacists in the nearby area for pseudoephedrine purchases. DEA investigators found that the same individual had also ordered excessive quantities from three other retail pharmacies. The individual ordered 20,000 pseudoephedrine 60 mg tablets, 100,000 tablets and 100,000 tablets respectively from these other pharmacies. At each of the retail distributors, the same individual had given different reasons for needing the pseudoephedrine.

In an unrelated incident, the DEA was notified of a large purchase of pseudoephedrine tablets by a large chain pharmacy in California. Further investigation revealed that an individual had taken a bottle of pseudoephedrine off the shelf and requested that the pharmacy staff place a large order for the product on his behalf. Upon consultation with the pharmacist-in-charge, an order for 4,000 bottles was placed. According to pharmacy records, the pharmacy had purchased a total of 550,000 pseudoephedrine tablets in five separate orders over a 3 month period. The individual never provided any identification, address or telephone number and always called the pharmacy to ask if the order had come in. After placing several orders, the pharmacist learned from a third party that pseudoephedrine tablets may be used to manufacture methamphetamine. At that point the pharmacist informed the individual that she would not order any more tablets because of possible misuse.

In a separate action, the DEA was notified by a large retail drug chain that individuals had just purchased about $800 worth of pseudoephedrine tablets from four of their pharmacies. A license plate check revealed that the vehicle utilized at the time of purchase belonged to the wife of a DEA fugitive and subject of a state methamphetamine investigation. During the investigation, investigators also learned of an unrelated purchase from another retail pharmacy whereby an individual attempted to order and purchase 100,000 pseudoephedrine tablets for ''export purposes'' to the Orient.

In an another incident, the DEA received a call from loss prevention personnel for a large chain drug store advising of two incidents of pseudoephedrine diversion that day. The entire inventory of pseudoephedrine product was purchased off the shelf of the pharmacy through 3 purchases. The purchases were made in cash.

In a separate case, DEA served an administrative subpoena on a pharmacy for records of receipt and sales of pseudoephedrine tablets. When the subpoena was served, DEA investigators found the pharmacy manager hiding in an adjacent room. After a consent to search, the DEA seized 300,000 pseudoephedrine tablets and $65,000 cash at the pharmacy. Agents later seized an additional $50,000 cash from a vehicle belonging to an individual who came to the pharmacy to buy pseudoephedrine from the pharmacy manager.

In mid 1995, two retail distributors were identified as selling large quantities of OTC pseudoephedrine. During an 8 month period one retailer sold 70,000 pounds of pseudoephedrine tablets and the second retail distributor sold approximately 8,500 pounds of pseudoephedrine tablets. As a result of an investigation into these excessive sales, several employees and individuals associated with these establishments were arrested by DEA.

In another instance, with the arrest of an individual for possession and manufacture of methamphetamine, DEA investigators found 3 liters of methamphetamine and sufficient chemicals for the production of approximately one kilogram of methamphetamine. In addition, investigators found pseudoephedrine/antihistamine combination OTC tablets (consisting of pseudoephedrine 60 mg and triprolidine 2.5 mg) and receipts for the purchase of OTC pseudoephedrine tablets from a local chain drug store. Later, investigators interviewed the drug store manager and reviewed store cash register receipts which documented the sale of pseudoephedrine combination OTC tablets.

The following are several examples which illustrate the magnitude of mail order diversion:

In October of 1995, the DEA seized a large methamphetamine laboratory utilizing pseudoephedrine capable of manufacturing 200 pounds of methamphetamine per month. Precursor material was obtained through the mail order purchase of OTC pseudoephedrine tablets.

In a long term DEA methamphetamine investigation, DEA seized 7.5 million dosage units of OTC pseudoephedrine and 1.8 million OTC ephedrine dosage units and other chemicals used in the manufacture of methamphetamine. The OTC products used as precursor material were obtained through mail order distributors. In the course of the investigation over 7.8 million dollars

was seized from the trafficking organization.

In another investigation, after the undercover purchase of 20 million pseudoephedrine tablets from an OTC manufacturer and distributor, DEA seized 25 metric tons of pseudoephedrine, ephedrine and phenylpropanolamine. Five tractor trailer trucks were required to remove the material to a secure storage facility. The company, which dealt extensively in mail order distribution, has been identified as purchasing 191 metric tons of pseudoephedrine and ephedrine between January 1994 and May 1995.

The above examples of significant diversion illustrate the need for regulation at all levels of distribution of non-personal use quantities, whether it be wholesale, retail or mail order distribution.

(6) One commentor noted that agencies are required to prepare and make available for public comment an initial regulatory flexibility analysis which describes the impact of a proposed rule on small entities. This commentor states that the NPRM is therefore deficient in that it does not adequately set forth such an analysis. The commentor did, however, recognize that this provision does not apply to instances where the head of the agency certifies that the rule will not have significant impact on a substantial number of small entities.

The NPRM documents the various provisions which were specifically provided in order to minimize the impact on small businesses. These provisions were the result of a reasoned analysis of the potential impact of implementation of the full extent of CSA regulations on the affected industry and small businesses in particular. In providing for these special provisions, DEA gave special care and consideration to industry concerns and given these provisions, ensured that these regulations ''will not have significant impact on a substantial number of small entities''.

As previously stated in the NPRM, the DEA met with and consulted with industry representatives prior to proposing these regulations in an effort to minimize any adverse impact. In addition, the NPRM specifically details provisions designed to eliminate the adverse impact on small businesses at the retail level. First, the DEA proposed that retail distributors not be subject to registration. Secondly, the DEA has limited controls to a specific group of products. Thirdly, the NPRM proposed the establishment of a threshold of 24.0 grams pseudoephedrine base and therefore would allow for the purchase and sale of up to a 120 day supply of pseudoephedrine for personal legitimate medical use, without the application of regulatory requirements. The proposed threshold was subsequently raised to 48.0 grams in this final rule. Lastly, the NPRM specifies that the threshold quantity applies only to a single transaction.

(7) One commentor suggested that small package sizes would be enormously expensive to divert and implied that these products therefore would not be cost effective sources of pseudoephedrine as precursor material for the synthesis of methamphetamine. Prior to proposing these regulations, however, the DEA reviewed the cost of various brand name pseudoephedrine products in various package sizes and formulations. The DEA undertook this examination for the specific purpose of determining whether certain products should remain exempt from the proposed regulations based solely on the fact that their use in the synthesis of methamphetamine would not be financially profitable. This review indicated that even the most expensive brand name pseudoephedrine dosage form products (including the more expensive syrups and products containing multiple active ingredients) would be cost effective sources of precursor material.

(8) Several commentors stated that the DEA has not provided a rationale for its selection of the group of drugs whose legal exemption would be revoked. These commentors stated that the NPRM provides insufficient scientific explanation as to why the exemption was removed for certain products. One commentor challenged that its scientists state that removal of pseudoephedrine in combination with antihistamines, guaifenesin and dextromethorphan is at least as difficult, if not more so, than analgesics and less efficient than from liquids, syrup and soft gelatin capsules. The commentor further stated that the DEA must consider whether the drug or group of drugs are formulated in such a way that cannot be easily used in the illicit production of controlled substances.

As stated in the NPRM, the DEA performed a review of the various pseudoephedrine dosage forms and available combinations of ingredients to determine which products are (1) formulated in such a way that the product itself cannot be easily used in the illicit production of methamphetamine; and (2) whether pseudoephedrine can be readily recovered from the product. In making determinations as to which product formulations should be subject to control, the DEA laboratory system undertook a study which utilized different types of OTC pseudoephedrine dosage forms and combinations of ingredients to see which of these formulations were most easily used in the clandestine synthesis of controlled substances using the procedures most commonly utilized by clandestine chemists. In addition, the study assessed whether pseudoephedrine could be readily extracted using clandestine laboratory techniques. In making its conclusions regarding which products and formulations should be regulated, the DEA considered, among other information, which products and formulations required modifications to normal clandestine manufacturing or extraction procedures and therefore required a more extension knowledge of chemistry. In response to comments that the DEA should elaborate further on its studies to determine the simplicity with which products may be converted to methamphetamine, the disclosure of such information would only serve to educate clandestine laboratory operators as to how to better produce methamphetamine and reveal which pseudoephedrine formulations provide the easiest source of precursor material.

(9) One commentor questioned the basis for DEA's claim that certain formulations and products can not be readily recovered. The commentor stated that liquids would be easier to convert and that the DEA provided no explanation as to why aspirin, acetaminophen or ibuprofen combinations are less likely to be diverted for clandestine use. In response to this comment, in attempting to manufacture methamphetamine from liquid formulations and combination products having formulations which contained an analgesic, DEA found that when a typical clandestine laboratory procedure was utilized, it was necessary to modify the manufacturing procedure in order to achieve acceptable results.

In determining which products should be subject to CSA chemical regulatory controls, the DEA has taken a conservative approach. As such, exemptions are being removed only for those products which *did not* require procedural changes when a typical methamphetamine clandestine manufacturing procedure was utilized. The exemptions are being retained for all pseudoephedrine products which required changes in these procedures.

(10) Several commentors stated that the NPRM would require training of employees to recognize a threshold transaction. The DEA acknowledges that retail distributors will need to provide instruction to their personnel so that

they are able to recognize an above-threshold transaction. In consultation with industry, the DEA has been informed that the most common package sizes range from 10 to 60 solid dosage units per package at the retail level. In proposing the establishment of the threshold of 24.0 grams pseudoephedrine base the DEA specifically ensured that such common package sizes are not adversely impacted.

DEA believes that the identification of above-threshold transactions will not be difficult, given package sizes routinely sold at the retail level. For example, one commentor stated that the vast majority of their brand name pseudoephedrine product is sold in package sizes of 24 dosage units or less with each unit containing 30 mg or 60 mg pseudoephedrine hydrochloride. Such packages would only contain between 0.6 grams and 1.2 grams pseudoephedrine base. An above-threshold purchase of greater than 24.0 grams of pseudoephedrine base contained in such products would be conspicuous and thereby difficult to conceal. An individual would have to purchase more than 976 dosage units of a 30 mg/dosage unit product. In the package size indicated, this would involve the purchase of more than 40 packages of such a product in a single transaction. For a 60 mg per dosage unit product packaged in bottles of 24 tablets, an above-threshold purchase would involve the purchase of over 488 dosage units in greater than 20 packages. Given the large size of the above transactions, it is not unreasonable to expect that retail distributors should be able to instruct personnel to recognize such conspicuous quantities in a single transaction.

Several commentors stated that in determining whether a transaction is above-threshold, retail distributors would have to differentiate between exempt and non-exempt pseudoephedrine products. These commentors stated that in the event that exempt and non-exempt pseudoephedrine products are both purchased in a single transaction, it will be difficult to determine whether the threshold has been exceeded.

In response to this comment, if both exempt and non-exempt pseudoephedrine products are purchased in a single transaction, the quantities of OTC cough-cold medication necessary to exceed the pseudoephedrine threshold would be even larger and more conspicuous than the quantities outlined above. The comment submitted by the National Association of Chain Drug Stores (NACDS) mentioned point of sale scanning as a possible way to monitor threshold quantities in a single transaction.

While the DEA believes that such transactions at the proposed threshold of 24.0 grams would be conspicuous and therefore easy to identify, the DEA has decided that in an effort to further reduce any potential burden on retailers, the threshold for pseudoephedrine will be increased to 48.0 grams. This quantity is double the proposed threshold. This would allow for the below-threshold purchase of 976 dosage units of a pseudoephedrine 60 mg product or 1953 dosage units of a 30 mg product in a single transaction. Such transactions would be sufficient for at least a 244 day supply of pseudoephedrine in a single transaction at the maximum recommended FDA dosage.

Concerns regarding the difficulty in providing instruction to employees to recognize a threshold transaction are therefore minimized by the implementation of the larger threshold and the magnitude of an above-threshold transaction. To further assist retailers in providing instruction to employees, the DEA will make available for distribution through industry associations, notices which provide further clarification of which pseudoephedrine products are regulated and guidance in recognizing a threshold transaction.

Given the large quantities of product necessary to exceed a threshold of 48.0 grams, it is not unreasonable to expect that retail distributors should be able to provide the rudimentary instruction necessary to recognize such conspicuous quantities. Retail distributors dealing only in quantities below these levels will not have to register with DEA and will not have to maintain records of transactions. Therefore, any impact on retail distributors is minimal

While the DEA has established the threshold at 48.0 grams (pseudoephedrine base) to permit the unregulated purchase of up to a 244 day supply at the maximum FDA recommended dosage of 240 mg pseudoephedrine HCl per day, the DEA is in no way encouraging consumers to exceed or ignore the warnings contained on the labeling of these pseudoephedrine products. This labeling, which is required by the FDA, warns that ''if symptoms do not improve within 7 days or are accompanied by a fever, consult a doctor''. In addition, some pseudoephedrine products warn the consumer ''Do not take this product for more than 7 days.'' Therefore, when the product is used in a manner consistent with its labeling, the purchase of a threshold quantity of 48.0 grams, will far exceed a 244 day supply of pseudoephedrine for personal legitimate medical use.

(11) Several commentors stated that before taking action against OTC pseudoephedrine products, the DEA should first use the enforcement tools such as registration requirements that Congress imposed under the DCDCA. In response to this comment, the DCDCA amended 21 U.S.C. 822 and 21 U.S.C. 823 to require registration of handlers of List I chemicals. However, the DCDCA stated that registration ''shall not be required for the distribution of a drug product that is exempted under section 102(39)(A)(iv).'' Therefore, registration requirements implemented under the DCDCA would not pertain to handlers of OTC pseudoephedrine products lawfully marketed under the Federal Food, Drug and Cosmetic Act. Since the DEA has already seen a shift toward the utilization of OTC pseudoephedrine products in clandestine laboratories, the registration of only bulk handlers of pseudoephedrine and ephedrine products would have no direct beneficial impact on preventing the diversion of these products.

(12) One commentor raised concerns that under the CSA chemical regulatory provisions, records will have to be maintained for a period of 4 years rather than a 2 year period. The commentor further states that while normal business records are adequate to meet the CSA regulatory requirements, the retention requirement will increase the recordkeeping burden. In response to this comment, the 4 year recordkeeping requirement for the chemical control provisions of the CSA was legislated by Congress (21 U.S.C. 830) and therefore is not within DEA's authority to change.

(13) One commentor requested a 45 day grace period allowing sales of covered products pending DEA action on registration applications. The commentor noted that, as written, the NPRM appears to prohibit above-threshold pseudoephedrine sales between the date the rule is finalized and the date registration is approved by DEA.

DEA agrees. In response to this comment, DEA has determined that each person required to obtain a registration because of implementation of this rule will be temporarily exempted from the registration requirement until the person has made proper application and the Administration has approved or denied such application, provided that the

application has been submitted within 45 days following the effective date of this regulation. (Section 1310.09 has been modified to reflect this.) This exemption only applies to the registration requirement; all other chemical control requirements set forth under the CSA will be in full force and effect as of the effective date of this regulation.

(14) One commentor noted that its independent distributors do not squarely meet the definition of ''retail distributors'' as defined as sales directly to ''walk-in'' customers for personal use. This commentor stated that most of their transactions are face-to-face but not walk-in. The commentor requested that the definition of retail distributor as set forth in Section 1309.02(g) be modified.

DEA agrees. Therefore, the DEA is modifying §§ 1309.28 and 1309.02(f) to reflect that the term retail distributor means a distributor whose List I chemical activities are restricted to the sale of drug products that are regulated as List I chemicals pursuant to § 1310.01(f)(1)(iv), in face-to-face transactions directly to individuals for personal use. The intent of this provision is for the distributor to be in the physical presence of the individual who is acquiring the pseudoephedrine for personal use.

In addition, the commentor noted that some distributions are from one of their independent distributors to another of their independent distributors. The commentor requested that these sales also be exempt since they are primarily below-threshold. However, the DEA has determined that these types of transactions do not meet the definition of retail distributor since such transactions would be intended for further distribution and would not be intended for personal use.

(15) One commentor requested clarification of the registration requirement for pharmacies. This commentor stated that because pharmacies are already registered, it could be implied that they would be subject to recordkeeping and reporting requirements.

In response to this request, pharmacies that do not engage in above-threshold transactions are treated the same as other retail distributors. However, pharmacies that sell above-threshold quantities in a single transaction will not meet the definition of retail distributor and will be required to register with DEA. In order to avoid the imposition of duplicative registration requirements on these registrants, 21 CFR 1309.25 provides for an exemption from chemical registration for controlled substance registrants. Although these entities will not be required to obtain a separate chemical registration, they will be required to comply with other chemical regulatory requirements such as recordkeeping and reporting requirements. Therefore, these pharmacies which sell above-threshold quantities of regulated pseudoephedrine products will be required to maintain a record of each transaction which exceeds the threshold in a single transaction and report any suspicious regulated transactions to the DEA.

(16) Two commentors inquired whether the exemption for their specific pseudoephedrine products could be reinstated if the products were modified in such a way that prevented their use as precursor material. In response to this comment, the DCDCA includes specific provisions for reinstatement of exemptions for particular drug products (21 U.S.C. 814). The DCDCA provides that upon application by a manufacturer of a particular drug product that has been removed from exemption, the exemption shall be reinstated with respect to the particular drug product if it is determined to be manufactured and distributed in a manner that prevents diversion. The DCDCA further states that factors to be considered shall include (1) the package sizes and manner of packaging of the drug product; (2) the manner of distribution and advertising of the drug product; (3) evidence of diversion of the drug product; (4) any actions taken by the manufacturer to prevent diversion of the drug product; and (5) such other factors as are relevant to and consistent with the public health and safety.

One commentor raised concerns regarding the limitation that only manufacturers may petition for reinstatement of the regulatory exemption of a specific product. This commentor stated that the regulations should be amended to allow distributors of private-brand products or any interested party to submit applications for reinstatement of exemption. In response to this request, please note that this provision was legislated by Congress under the DCDCA (21 U.S.C. 814) and specifies that ''on application by a manufacturer of a particular drug product'' the exemption may be reinstated if the particular drug product is manufactured or distributed in a manner that prevents diversion. Any such change would require Congressional legislation.

(17) Two commentors requested a hearing on the proposal pursuant to 21 U.S.C. 875. In response to these requests, unlike other rulemaking conducted pursuant to the CSA, the present rulemaking presents no requirement that the rule be made on the record after opportunity for a hearing. For example, 21 U.S.C. 811(a) requires the opportunity for a hearing whenever there is a proposed rescheduling of controlled substances. In addition, 21 U.S.C. 875 identifies general powers available to the DEA when exercising its authority under the CSA. Thus, 21 U.S.C. 875 complements existing hearing provisions under the CSA rather than conferring independent hearing authority. In any event, the DEA believes that the notice and comment conducted pursuant to this rulemaking enabled interested parties to provide meaningful comment on the final rule.

(18) One commentor stated that the rule is a significant regulatory action and should be reviewed by the Office of Management and Budget. This commentor also noted that the rule could have an annual effect on the economy of $100 million or more.

As outlined above, these regulations go to great lengths to avoid impacting retail distribution of these OTC products. Since the vast majority of distributors who handle these products will not need to register or maintain records, the economic impact of this proposal is extremely small. This rule is therefore not a significant regulatory action.

Final Rule

After careful consideration of each of the above comments, this regulation is finalized as follows:

Removal of Exemption

21 U.S.C. 814(a) provides that the Attorney General shall remove from exemption under 21 U.S.C. 802(39)(A)(iv) and drug or group of drugs that the Attorney General finds is being diverted to obtain a listed chemical for use in the illicit production of a controlled substance. 21 U.S.C. 814(b) further provides that in removing the exemption for a drug or group of drugs, the Attorney General shall consider (1) the scope, duration, and significance of the diversion, (2) whether the drug or group of drugs is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and (3) whether the listed chemical can be readily recovered from the drug or group of drugs.

Pseudoephedrine is available in a variety of dosage forms either as single entity products or in combination with one or more other active medicinal ingredients. While the majority of OTC pseudoephedrine products currently used for the illicit production of

methamphetamine are single entity products, combination products have been identified at clandestine laboratories. The DEA has reviewed the various pseudoephedrine dosage forms and available combinations of ingredients. Some of these products are formulated in such a way that the product itself can be used in the illicit production of methamphetamine; others are formulated in such a way that pseudoephedrine can be readily recovered from the product; and some of these products are formulated in such a way that the manufacture of methamphetamine is impeded. Based on this analysis, the DEA has determined that OTC solid dosage form products (i.e. tablets, capsules and powder packets) lawfully marketed under the Federal Food, Drug, and Cosmetic Act and which contain pseudoephedrine in combination with acetaminophen, aspirin or ibuprofen are formulated in such a way that pseudoephedrine cannot be readily recovered and these products are not easily used as precursors for the illicit production of methamphetamine. In addition, the DEA has determined that OTC liquids, syrups and soft gelatin capsules, which are lawfully marketed under the Federal Food, Drug, and Cosmetic Act and which contain pseudoephedrine either as the sole active ingredient or in combination with other active ingredients, are formulated in such a way that the pseudoephedrine cannot be readily recovered and the products cannot be easily used in the illicit production of methamphetamine.

Thus the DEA is removing the exemption under 21 CFR 1310.01(f)(1)(iv) and 21 CFR 1313.02(d)(1)(iv) for OTC solid dosage form pseudoephedrine products (i.e. tablets, capsules and powder packets) lawfully marketed under the Federal Food, Drug, and Cosmetic Act, which do not contain therapeutically significant quantities of acetaminophen, aspirin or ibuprofen. These products, which include tablets, capsules and powder packets containing pseudoephedrine as the sole active ingredient or in combination with one or more active ingredients such as antihistamines, guaifenesin or dextromethorphan, will be subject to the regulatory requirements of the CSA.

For purposes of this paragraph, the term ''therapeutically significant quantities'' shall apply if the product formulation (i.e. the qualitative and quantitative composition of active ingredients within the product) is listed in current editions of the American Pharmaceutical Association (APhA) Handbook of NonPrescription Drugs; Drug Facts and Comparisons (published by Wolters Kluwer Company); or USP DI (published by the authority of the United States Pharmacopeial Convention, Inc.). For drug products having a formulation not found in the above compendiums, the DEA Administrator shall determine, pursuant to a written request as specified in Section 1310.14, whether the active medicinal ingredients are present in quantities considered therapeutically significant for purposes of this paragraph.

The exemption provided under 21 CFR 1310.01(f)(1)(iv) and 21 CFR 1313.02(d)(1)(iv) will remain for liquids, syrups, and soft gelatin capsules containing pseudoephedrine (regardless of formulation) and any type of solid dosage form product which contains pseudoephedrine in combination with therapeutically significant quantities of either acetaminophen, aspirin or ibuprofen provided that the product is lawfully marketed under the Federal Food, Drug, and Cosmetic Act. In addition, the final regulations allow pseudoephedrine prescription products, regardless of the product formulation, to remain exempt from the final regulations, given existing distribution and dispensing requirements already imposed under the Federal Food, Drug and Cosmetic Act.

While certain pseudoephedrine products remain exempt from the regulatory controls of the CSA, all pharmaceutical products containing pseudoephedrine are List I chemicals, and as such, are subject to the criminal provisions of the CSA. Specifically, 21 U.S.C. 841(d) provides that any person who possesses or distributes any listed chemical knowing, or having reasonable cause to believe that it will be used to manufacture a controlled substance, shall be fined in accordance with Title 18, or imprisoned not more than 10 years, or both.

Pursuant to 21 U.S.C. 814(c), the DEA has considered the evidence of diversion of the above listed pseudoephedrine products, the pattern of diversion of ephedrine products, including combination products and other relevant data, and has determined that the affected groups of pseudoephedrine products is limited to that currently necessary to prevent the diversion of pseudoephedrine products to illicit methamphetamine laboratories.

Revision of Threshold

The threshold for pseudoephedrine is being changed from 1.0 kilogram to 48.0 grams pseudoephedrine base for domestic, import and export transactions. Even if the exemption for certain OTC pseudoephedrine products is eliminated, a 1.0 kilogram threshold is not adequate to prevent the significant diversion of these pseudoephedrine products to clandestine laboratories. The threshold of 1.0 kilogram of pseudoephedrine base in equivalent to greater than 20,000 pseudoephedrine HCl 60 mg dosage units. Therefore the DEA is reducing the threshold for pseudoephedrine. In order to ensure that OTC pseudoephedrine products remain available to those individuals who utilize these decongestants for legitimate medical purposes, the DEA is establishing the threshold for pseudoephedrine at a level which will have no impact on personal use. As such, individuals who purchase below-threshold quantities intended for legitimate personal medical use, and retailers who sell below-threshold quantities for use by individuals for legitimate personal medical use, will not be adversely impacted by these regulations.

The FDA has established a labeling requirement which sets the maximum adult daily dosage of pseudoephedrine at 60 mg every 6 hours or 240 mg per day. A 244 day supply of pseudoephedrine at the maximum daily recommended dose of 240 mg pseudoephedrine hydrochloride per day is equivalent to 58.56 grams of pseudoephedrine hydrochloride or 47.97 grams pseudoephedrine base. Therefore the DEA is establishing a threshold of 48.0 grams pseudoephedrine base. Such a threshold will allow the purchase and sale of up to a 244 day supply of pseudoephedrine for personal legitimate medical use at the maximum FDA recommended dosage, without the application of regulatory requirements. This will allow continued access to these products for legitimate use.

Waiver of Registration

In an effort to ensure the continued availability of pseudoephedrine products for legitimate personal use at the retail level, the DEA is providing a waiver from registration for any retail distributor of regulated pseudoephedrine products. Therefore retail distributors (defined under 21 CFR 1309.02) of regulated pseudoephedrine products will not be required to obtain a DEA registration to distribute personal use quantities of OTC pseudoephedrine to individuals for legitimate medical use. The authority for providing a waiver is clearly set forth in 21 U.S.C. Section 822(d) whereby ''The Attorney General may, by regulation, waive the requirement for registration of certain manufacturers,

distributors, or dispensers if he finds it consistent with the public health and safety.''

As discussed, it is estimated that there are approximately 750,000 retail distributors of pseudoephedrine in the United States. Such a waiver will benefit the vast majority of these distributors. Firms engaging in above-threshold transactions of non-exempt pseudoephedrine products, however, will not be considered retail distributors. Therefore they will be required to obtain a DEA registration as a distributor, maintain records as specified in 21 CFR 1310.04 and report suspicious regulated transactions as specified in 21 CFR 1310.05 notification requirement. In addition, all importers, exporters and other types of distributors (such as mail order distributors) of non-exempt pseudoephedrine products will be required to register with the DEA and will be subject to the full regulatory provisions of the CSA Act and the Controlled Substances Import and Export Act.

Conclusion

The clandestine manufacture and abuse of methamphetamine are serious national public health problems which require Federal action. Companies operating on the fringe of legitimate commerce are supplying these clandestine laboratories with needed precursor material such as ephedrine and pseudoephedrine. In an effort to minimize the impact of the final regulations on the legitimate industry, the DEA has examined various options available.

The DEA is aware of the large scale legitimate use of OTC pseudoephedrine products and their widespread distribution at retail outlets. However, the DEA believes that the registration, recordkeeping, reporting and notification requirements that have been successfully used to limit the diversion of other chemicals to clandestine laboratories are needed to control this problem.

The Attorney General has delegated authority under the CSA and all subsequent amendments to the CSA to the Administrator of the DEA (28 CFR 0.100). The Administrator, in turn, has redelegated this authority to the Deputy Administrator pursuant to 28 CFR 0.104.

The Deputy Administrator has reviewed this regulation and by approving it certifies that while this regulation will necessitate that retail distributors of regulated pseudoephedrine products instruct employees to recognize a threshold transaction, the level of instruction needed is minimal, given the magnitude of the quantities needed to exceed the threshold in a single transaction. In addition, the vast majority of retail distributors deal only in quantities far below the threshold in a single transaction and therefore will not need to register with the DEA and will not need to maintain records. Therefore the Deputy Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

The Drug Enforcement Administration has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866 Section 3(f) and the Office of Management and Budget (OMB) has waived its review under section 6(a)(3)(A) of the order.

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

List of Subjects

21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, List I and List II chemicals, Security measures.

21 CFR Part 1310

Drug traffic control, List I and II chemicals, Reporting and recordkeeping requirements.

21 CFR Part 1313

Drug Traffic Control, Exports, Imports, List I and II chemicals, Transshipment and in-transit shipments.

For reasons as set out above, 21 CFR Parts 1309, 1310 and 1313 are amended as follows:

PART 1309—[AMENDED]

1. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

2. Section 1309.02 is amended by revising paragraph (g) to read as follows:

* * * * *

(f) The term *retail distributor* means a distributor whose List I chemical activities are restricted to the sale of drug products that are regulated as List I chemicals pursuant to Section 1310.01(f)(1)(iv) of this chapter, in face-to-face transactions directly to individuals for personal use. For purposes of § 1309.28, sale for personal use means the sale of below threshold quantities in a single transaction to an individual for legitimate medical use.

3. Section 1309.28 is added to read as follows:

§ 1309.28 Exemption of retail distributors of certain pseudoephedrine products.

The requirement of registration is waived for any retail distributor, for the distribution of any product containing pseudoephedrine that is regulated pursuant to § 1310.01(f)(1)(iv)(A)(*2*) of this chapter. The term *retail distributor*, as defined in § 1309.02(f), means a distributor whose List I chemical activities are restricted to the sale of drug products that are regulated as List I chemicals pursuant to § 1310.01(f)(1)(iv) of this chapter, in face-to-face transactions directly to individuals for personal use. For purposes of this paragraph, sale for personal use means the sale of below-threshold quantities in a single transaction to an individual for legitimate medical use. The cumulative threshold requirements for multiple transactions within a calendar month will not apply to sales for personal use of any product containing pseudoephedrine that is regulated pursuant to § 1310.01(f)(1)(iv)(A)(*2*) of this chapter. (The threshold of 48.0 grams pseudoephedrine base is equivalent to 976 pseudoephedrine hydrochloride 60 mg dosage units.)

4. Section 1309.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1309.71 General security requirements.

* * * * *

(a) * * *

(2) In retail settings open to the public where drugs containing List I chemicals that are regulated pursuant to § 1310.01(f)(1)(iv)(A)(*1*) of this chapter are distributed, such drugs will be stocked behind a counter where only employees have access. This requirement does not apply to drugs containing List I chemicals that are regulated pursuant to § 1310.01(f)(1)(iv)(A)(*2*) of this chapter.

* * * * *

21 CFR part 1310 is amended as follows:

PART 1310—[AMENDED]

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

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

2. Section 1310.01 is amended by revising paragraph (f)(1)(iv)(A) to read as follows:

§ 1310.01 Definitions.

* * * * *

(f) * * *

(1) * * *

(iv) * * *

(A)(*1*) The drug contains ephedrine or its salts, optical isomers, or salts of optical isomers as the only active medicinal ingredient or contains ephedrine or its salts, optical isomers, or salts of optical isomers and therapeutically insignificant quantities of another active medicinal ingredient. For purposes of this paragraph, the term ''therapeutically insignificant quantities'' shall apply if the product formulation (i.e. the qualitative and quantitative composition of active ingredients within the product) is not listed in current editions of the American Pharmaceutical Association (APhA) Handbook of NonPrescription Drugs; Drug Facts and Comparisons (published by Wolters Kluwer Company); or USP DI (published by the authority of the United States Pharmacopeial Convention, Inc.); or the product is not listed in Section 1310.15 as an exempt drug product. For drug products having formulations not found in the above compendiums, the Administrator shall determine, pursuant to a written request as specified in Section 1310.14, whether the active medicinal ingredients are present in quantities considered therapeutically significant for purposes of this paragraph; or

(*2*) The drug is an over-the-counter (OTC) solid dosage form product (tablet, capsule or powder packet) which contains pseudoephedrine or its salts, optical isomers, or salts of optical isomers but does not contain either acetaminophen, aspirin or ibuprofen in therapeutically significant quantities. (This provision applies only to OTC pseudoephedrine products and does not include those pseudoephedrine products dispensed only pursuant to a prescription.) For purposes of this paragraph, the quantities of either acetaminophen, aspirin or ibuprofen present in a pseudoephedrine drug product shall be considered to be present in ''therapeutically significant quantities'' if the product formulation (i.e. the qualitative and quantitative composition of active ingredients within the product) is listed in current editions of the American Pharmaceutical Association (APhA) Handbook of NonPrescription Drugs; Drug Facts and Comparisons (published by Wolters Kluwer Company); or USP DI (published by the authority of the United States Pharmacopeial Convention, Inc.); or the product is listed in § 1310.15 as an exempt drug product. For drug products having a formulation not found in the above compendiums, the Administrator shall determine, pursuant to a written request as specified in § 1310.14, whether the active medicinal ingredients (acetaminophen, aspirin or ibuprofen) are present in quantities considered therapeutically significant for purposes of this paragraph; or

* * * * *

3. Section 1310.04 is amended by revising the introductory text in paragraph (f) and paragraph (f)(1)(x) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(f) Except as provided in § 1309.28 of this chapter for sales for personal use, for those listed chemicals for which thresholds have been established, the quantitative threshold or the cumulative amount for multiple transactions within a calendar month to be utilized in determining whether a receipt, sale, importation, or exportation is a regulated transaction is as follows:

(1) List I Chemicals:

Chemical	Threshold by base weight
(x) Pseudoephedrine, its salts, optical isomers and salts of optical isomers.	48 grams.

* * * * *

4. Section 1310.09 is revised to read as follows:

§ 1310.09 Temporary exemption from registration.

Each person required by section 3(b) of the Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103–200, effective April 16, 1994), to obtain a registration to manufacture, distribute, import, or export a list I chemical (other than those list I chemicals exempted under § 1310.01(f)(1)(iv)), is temporarily exempted from the registration requirement. The registration exemption will remain in effect for each person until the person has made proper application for registration and the Administration has approved or denied such application, provided that the application has been submitted within 45 days following the effective date of the regulations in part 1309 implementing the Domestic Chemical Diversion Control Act of 1993. In addition, each person required to obtain a registration to manufacture, distribute, import, or export a drug or group of drugs removed from exemption under § 1310.01(f)(1)(iv) is also temporarily exempted from the registration requirement. The registration exemption will remain in effect for each person until the person has made proper application for registration and the Administration has approved or denied such application, provided that the application has been submitted within 45 days following the effective date of the regulation which eliminates the exemption under § 1310.01(f)(1)(iv). These registration exemptions apply only to registration; all other chemical control requirements set forth in the Domestic Chemical Diversion Control Act of 1993 and in parts 1310 and 1313 of this chapter remain in full force and effect.

5. Section 1310.14 is amended by revising the heading and by revising paragraph (a) to read as follows:

§ 1310.14 Exemption of certain ephedrine or pseudoephedrine combination drug products.

(a) Any manufacturer of a drug product containing ephedrine in combination with another active medicinal ingredient, the product formulation of which is not listed in the compendiums set forth in § 1310.01(f)(1)(iv)(A)(*1*), or any manufacturer of a drug product containing pseudoephedrine in combination with acetaminophen, aspirin or ibuprofen, the product formulation of which is not listed in the compendiums set forth in § 1310.01(f)(1)(iv)(A)(*2*), may request that the Administrator exempt the product as one which contains ephedrine together with therapeutically significant quantities of the other active medicinal ingredients or pseudoephedrine in combination with therapeutically significant quantities of acetaminophen, aspirin or ibuprofen.

* * * * *

6. Section 1310.15 is amended by revising the heading, by revising paragraph (a), and by revising paragraph (d) to read as follows:

§ 1310.15 Exempt combination drug products containing ephedrine or pseudoephedrine.

(a) The drug products containing ephedrine in combination with therapeutically significant quantities of another active medicinal ingredient, or pseudoephedrine in combination with therapeutically significant quantities of acetaminophen, aspirin, or ibuprofen; listed in paragraph (d) of this section, have been exempted by the Administrator from application of sections 302, 303, 310, 1007, and 1008 of the Act (21 U.S.C. 822–3, 830, and 957–8) to the extent described in

paragraphs (b), (c), and (d) of this section. * * *

(d) In addition to the drug products listed in the compendium set forth in §§ 1310.01(f)(1)(iv)(A)(*1*) and 1310.01(f)(1)(iv)(A)(*2*), the following drug products, in the form and quantity listed in the application submitted (indicated as the ''date'') are designated as exempt drug products for the purposes set forth in this section:

EXEMPT DRUG PRODUCTS CONTAINING EPHEDRINE IN COMBINATION WITH THERAPEUTICALLY SIGNIFICANT QUANTITIES OF ANOTHER ACTIVE MEDICINAL INGREDIENT AND EXEMPT DRUG PRODUCTS CONTAINING PSEUDOEPHEDRINE IN COMBINATION WITH THERAPEUTICALLY SIGNIFICANT QUANTITIES OF ACETAMINOPHEN, ASPIRIN OR IBUPROFEN

Supplier	Product name	Form	Date
[Reserved].	.....	.....	

21 CFR part 1313 is amended as follows:

PART 1313—[AMENDED]

1. The authority citation for part 1313 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 971.

2. Section 1313.02 is amended by revising paragraph (d)(1)(iv)(A) to read as follows:

§ 1313.02 Definitions.

* * * * *

(d) * * *

(1) * * *

(iv) * * *

(A)(*1*) The drug contains ephedrine or its salts, optical isomers, or salts of optical isomers as the only active medicinal ingredient or contains ephedrine or its salts, optical isomers, or salts of optical isomers and therapeutically insignificant quantities of another active medicinal ingredient. For purposes of this paragraph, the term ''therapeutically insignificant quantities'' shall apply if the product formulation (i.e. the qualitative and quanitative composition of active ingredients within the product) is not listed in current editions of the American Pharmaceutical Association (APhA) Handbook of NonPrescription Drugs; Drug Facts and Comparisons (published by Wolters Kluwer Company); or USP DI (published by the authority of the United States Pharmacopeial Convention, Inc.); or the product is not listed in § 1310.15 as an exempt drug product. For drug products having formulations not found in the above compendiums, the Administrator shall determine, pursuant to a written request as specified in Section 1310.14, whether the active medicinal ingredients are present in quantities considered therapeutically significant for purposes of this paragraph; or

(2) The drug is an over-the-counter (OTC) solid dosage form product (tablet, capsule or powder packet) which contains pseudoephedrine or its salts, optical isomers, or salts of optical isomers, but does not contain either acetaminophen, aspirin or ibuprofen in therapeutically significant quantities. (This provision applies only to OTC pseudoephedrine products and does not include those pseudoephedrine products dispensed only pursuant to a prescription.) For purposes of this paragraph, the quantities of either acetaminophen, aspirin or ibuprofen present in a pseudoephedrine drug product shall be considered to be present in ''therapeutically significant quantities'' if the product formulation (i.e. the qualitative and quantitative composition of the active ingredients within the product) is listed in current editions of the American Pharmaceutical Association (APhA) Handbook of NonPrescription Drugs; Drug Facts and Comparisons (published by Wolters Kluwer Company); or USP DI (published by the authority of the United States Pharmacopeial Convention, Inc.); or the product is listed in § 1310.15 as an exempt drug product. For drug products having a formulation not found in the above compendiums, the Administrator shall determine, pursuant to a written request as specified in § 1310.14, whether the active medicinal ingredients (acetaminophen, aspirin or ibuprofen) are present in quantities considered therapeutically significant for purposes or this paragraph; or

* * * * *

Dated: May 9, 1996.

Stephen H. Greene,

Deputy Administrator.

Note: The following text will not appear in the Code of Federal Regulations.

Appendix

On May 9, 1996 the Deputy Administrator of the Drug Enforcement Administration (DEA) signed the above rule which finalizes a Notice of Proposed Rulemaking (NPRM) published in the Federal Register on October 31, 1995 (60 FR 55348). At the request of the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, the rule was provided to OMB for review on May 16, 1996. OMB cleared the final rule for publication on July 22, 1996. In the interim, however, 5 U.S.C. 605(b) was amended to require that at the time of publication of a final rule, the agency shall publish a statement providing the factual basis for the certification that the rule will not have a significant economic impact on a substantial number of small entities. While the issue of whether this rule will have a significant economic impact on a substantial number of small entities was addressed in this final rule, DEA is providing the information in this appendix to insure compliance with the amendments to 5 U.S.C. 605(b), which became effective on June 27, 1996, after the final rule was signed.

In making a determination that the rule will not have a significant economic impact on a substantial number of small entities, the DEA conducted a review of the affected industry. In performing this review, the DEA carefully considered regulatory alternatives and the potential impact of each regulatory alternative on the affected industry and small businesses in particular.

The clandestine manufacture and abuse of methamphetamine are serious national public health problems which require Federal action. Pseudoephedrine products produced to meet legitimate medical needs are diverted by clandestine laboratory operators for use as precursor material for the production of methamphetamine.

The DEA is aware of the large scale legitimate use of the over-the-counter (OTC) pseudoephedrine products and their widespread distribution at retail outlets. However, the DEA believes that the registration, recordkeeping, reporting and notification requirements that have been successfully used to limit the diversion of other chemicals to clandestine laboratories are needed to control this problem. In writing this regulation, the DEA considered various levels of regulatory control on pseudoephedrine products. These options ranged from the establishment of no controls on pseudoephedrine products to the imposition of the full extent of controls permitted under existing statutory authority. Given the magnitude of documented deaths due to methamphetamine and the untold cost of violence and crime associated with methamphetamine abuse, the DEA determined that some measure of control is necessary and therefore the establishment of no regulatory control on pseudoephedrine products is not a viable option. However, the burden associated with the application of the full extent of regulatory controls, including the regulation of all pseudoephedrine products, a threshold of zero (whereby records would be required for all transactions regardless of size), and the imposition of a registration requirement on all retailers, would produce an excessive burden on legitimate industry. Given the potentially large impact of such regulatory action, the DEA sought to impose less stringent regulatory requirements so as not to adversely impact legitimate businesses.

In the proposed regulation published in October of 1995, the DEA documented that it had determined that approximately 750,000 retail distributors and an

undetermined number of other distributors would be impacted if pseudoephedrine products were made subject to the full extent of the Controlled Substances Act (CSA) chemical regulatory provisions. However, in recognizing the need to limit the regulatory impact on handlers of pseudoephedrine products to a level adequate to prevent the large scale diversion of these products of clandestine use, the DEA has taken significant steps to reduce or eliminate the controls on retailers who sell these pseudoephedrine products of legitimate consumers.

First, given the large number of retail distributors who handle these products in the United States, the DEA has provided a waiver from registration for these distributors. Thus, the regulations primarily impact distributors who are not classified as retail distributors. These distributors include mail-order and wholesale distributors. The DEA has attempted to identify the number of firms which will be impacted by these regulations. This review included consultation with industry associations and other Federal and local government agencies. These entities were only able to identify a limited number of firms which would become subject to regulatory controls as a result of this rule.

Secondly, the DEA has limited controls to a specific group of products which have been demonstrated to be most readily used for illicit purposes. This approach provides effective protection against diversion while minimizing the burden on industry. Thirdly, the *proposed* regulations allowed for the purchase and sale of up to a 120 day supply of pseudoephedrine for personal legitimate medical use in a single transaction, without the application of regulatory requirements. Based on comments, in the final rule the DEA doubled the amount to a 244 day supply (976 pseudoephedrine 60 mg dosage units) in a single transaction. Despite concerns that traffickers may exploit this increased threshold, DEA allowed the increase to ensure continued public access to the products for personal legitimate medical use at the retail level. A secondary benefit of this threshold is the fact that many retail outlets do not stock such quantities of pseudoephedrine products, thus obviating concerns regarding their regulation.

Prior to writing the proposed regulation, the DEA consulted with the National Wholesale Druggists Association (NWDA) in an effort to determine the potential size of the impacted industry. According to NWDA sources, there are approximately 750,000 retail distributors in the U.S. which sell over-the-counter pseudoephedrine products. In addition, the DEA met with the Nonprescription Drug Manufacturers Association (NDMA) regarding the U.S. pseudoephedrine market to obtain input on the distribution of pseudoephedrine for legitimate medical use. NDMA has further confirmed that there are approximately 750,000 retail distributors of over-the-counter products in the U.S. NDMA, which stated that its members account for the manufacture of over 90 percent of the over-the-counter drugs marketed domestically, informed DEA that member companies primarily distribute pseudoephedrine in package size ranging from 10 to 60 solid dosage units per package. In an effort to reduce the impact upon those who sell and purchase pseudoephedrine products at the retail level, the DEA established a threshold that was well above the standard package size manufactured by NDMA members and distributed by retail distributors. The threshold of 48.0 grams pseudoephedrine base is equivalent to 976 pseudoephedrine hydrochloride 60 mg dosage units.

To further quantify the potential impact of the regulations the DEA has obtained data from the U.S. Bureau of the Census, 1992 Census of Retail Trade. This data documents the number of retail trade establishments based upon Standard Industrial Classification (SIC). This data documents a total of 552,000 potential retailers of pseudoephedrine (to include 63,000 General Merchandise Stores SIC Code 53, 278,000 Food Stores SIC Code 54, 120,000 Gas Service Stations SIC Code 554, 51,000 Drug Stores and Proprietary Stores SIC Code 591 and 40,000 Liquor Stores SIC Code 592).

In addition the DEA has obtained data from the U.S. Department of Agriculture, Economic Research Service, Food Marketing Review which breaks down the number of retail food stores by category for 1993. Of the 249,600 retail food stores documented, 49,500 are classified as convenience stores and 89,800 as Superettes (defined as being primarily self-service in operation, selling a wide variety of food and non-food products with annual sales below $2.5 million.) In addition, the data documents 3,100 Warehouse Stores (which are defined as containing limited product variety and fewer services, while incorporating case lot stocking and shelving practices) and 500 Superwarehouse Retail Outlets (defined as larger warehouses that offer expanded product variety.)

Convenience Stores appear not to even shelf threshold quantities of pseudoephedrine. Such entities which do not stock a threshold quantity and therefore would not exceed the threshold quantities in a single transaction, would not be impacted by these regulations. The 3,600 Warehouse and Superwarehouse outlets, however, may choose to distribute above threshold quantities and therefore would not meet the definition of ''retail distributor''. These entities would therefore be required to register with the DEA and maintain a record of only those transactions which exceed the threshold of 48.0 grams pseudoephedrine base.

Additionally, the National Association of Chain Drug Stores (NACDS) noted point of sale scanning as a possible way to monitor threshold quantities of regulated product in a single transaction. The DEA has obtained data on the percent of Supermarkets having point of sale scanning checkouts. A 1993 study performed by the Maclean Hunter Media, Inc., Stamford, CT, 61st Annual Report of the Grocery Industry indicated that approximately 85 percent of independent and chain supermarkets had scanning checkouts. The percent of Supermarkets having this capability was up from 71 percent in 1990. NACDS's suggestion, therefore, appears to be applicable to the Supermarket industry as well.

The primary impact of the regulations will be upon those entities not classified as retail distributors. Such entities include mail-order distributors and wholesale distributors. The DEA has attempted to quantify the number of these distributors in the U.S. The NWDA informed the DEA that its 1993 Operating Survey indicated that 70 full-line drug wholesalers (who distribute both prescription and over-the-counter products) distributed nearly 80 percent of the prescription drugs in the U.S. in 1993. These full-line drug wholesalers operated approximately 230 distribution centers. Information provided by NWDA indicates that due to consolidation within the drug wholesale industry, there are currently only approximately 50 full-line wholesale distributors supplying this market in the U.S.

These firms are already CSA registrants and as such would not need to obtain a separate registration under the proposed regulations (Title 21 Code of Federal Regulations 1309.25). In addition, the impact upon these full-line distributors will be minimized since, pursuant to § 1310.06(b), normal business records shall be considered adequate if they contain the information required in 21 CFR 1310.06(a) and are readily retrievable from other business records.

The NWDA was unable to provide estimates of the percentage of the over-the-counter market supplied by these full-line distributors but informed DEA of the existence of other smaller wholesale distributors who only distribute over-the-counter pseudoephedrine products. These wholesale distributors will be impacted by the proposed regulations since they will be required to register with DEA and ensure that records maintained are adequate to meet the requirements under Section 1310.06.

In addition to contact with the industry associations, the DEA has contacted the National Association of Boards of Pharmacy and several State Boards of Pharmacy in an attempt to quantify the number of these distributors currently operating in the U.S. which will be impacted by these regulations. These various industry and professional groups contacted by the DEA were unable to quantify the number of these firms operating in the U.S. or identify a professional association which represents these business entities. However, in the instance where a state was able to identify the number of firms licensed to distribute drug products into that state, the number of firms was not large, (e.g. As stated in the proposed rule, the State of Idaho licenses all business entities which distribute over-the-counter products into or within the state. The Idaho Board of Pharmacy indicated that the majority of the distributors are actually outside of Idaho and that only 418 distributors are licensed to distribute drug products into Idaho.)

Conclusion

The DEA has substantially limited the impact the regulations will have on pseudoephedrine handlers. The requirements have been designed to ensure that the vast majority of retailers of pseudoephedrine will not be subject to regulation. Retail distributors will not be required to register or maintain records unless they engage in

transactions involving a limited group of pseudoephedrine products in quantities that exceed a 244 day supply in a single transaction. Most retail distributors do not engage in such transactions and therefore will not be subject to these regulations.

The proposed and final rule, in conjunction with this appendix document the various provisions which were specifically provided in order to minimize the impact on small businesses. These provisions were the result of a reasoned analysis of the potential impact of implementation of the full extent of CSA regulations on the affected industry and small businesses in particular. In providing for these special provisions, DEA gave special care and consideration to industry concerns and given these provisions, ensured that these regulations ''will not have significant impact on a substantial number of small entities''.

Dated: July 30, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–19846 Filed 8–6–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31 and 602

[TD 8664]

RIN 1545–AL99

Information Reporting and Backup Withholding; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations [TD 8664] which were published in the Federal Register on Monday, April 22, 1996 (61 FR 17572). The final regulations provide rules regarding the reporting on Form 1042–S of certain bank deposit interest paid with respect to a United States bank account to an individual who is a nonresident alien of the United States and a resident of Canada.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Teresa Burridge Hughes, (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations which are the subject of these corrections are under sections 3406 and 6049 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8664) contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 8664), which are the subject of FR Doc. 96–9456 is corrected as follows:

1. On page 17572, column 3, in the preamble following the paragraph heading ''Paperwork Reduction Act'', the first line of the column, the language ''Washington DC 20224, and the Office of'' is corrected to read ''Washington, DC 20224, and the Office of''.

2. On page 17573, column 1, in the preamble following the paragraph heading ''*B. Comments on Canadian Reporting Provisions*'', the third paragraph, line 5, the language ''the Form 1042–S to be the transmittal'' is corrected to read ''the Form 1042 to be the transmittal''.

PART 1—[CORRECTED]

3. On page 17573, column 2, in the authority citation, line 2, the language ''Sections 1.6049–4 also issued under 26'' is corrected to read ''Section 1.6049–4 also issued under 26''.

§ 1.6049–6 [Corrected]

4. On page 17574, column 1, § 1.6049–6(e)(4), the fourth line from the bottom of the paragraph, the language ''information on the Form is being'' is corrected to read ''information on the form is being''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–20125 Filed 8–6–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD07–96–017]

RIN 2115–AA98

Anchorage Areas; Ashley River, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing two new anchorage areas in the Ashley River, Charleston, South Carolina. Due to pending construction of two 1000 ft piers at the George M. Lockwood Municipal Marina, in Charleston, the current anchorage in 33 CFR 110.72d will not be available for anchoring recreational vessels. The Municipal Marina has received a construction permit to build the piers from the U.S. Army Corps of Engineers. The new anchorages are replacing the one described in 33 CFR 110.72d. The new anchorages are across the Ashley River from the current anchorage and though not designated as Federal anchorages, they are already widely used by recreational vessels as overflow from the current anchorage.

DATES: September 6, 1996.

ADDRESSES: Requests for further information should be mailed to the Captain of the Port Charleston, Marine Safety Office Charleston, 196 Tradd Street, South Carolina 29401–1899.

FOR FURTHER INFORMATION CONTACT: CWO4 R.M. Webber, Project Officer, Marine Safety Office Charleston, South Carolina, Tel: (803) 724–7690.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 23, 1996, the Coast Guard published a notice of proposed rulemaking entitled ''Special Anchorage Areas; Ashley River, Charleston, SC'' (CGD07–96–017) in the Federal Register (61 FR 17861). The comment period ended June 24, 1996. The Coast Guard received 11 comments during the proposed rulemaking period. Eight letters of no objection and three letters in favor of the new anchorages were received. The letters of no objection verified that the anchorages would not impact the environment, historic sites, fisheries or navigation. A public hearing was not requested and one was not held.

Discussion of Regulations

The City Marina Company and the City of Charleston have received a U.S. Army Corps of Engineers permit to build two 1000 foot piers on the south side of the Municipal Marina. Those piers will cross an existing anchorage eliminating most of the anchorages within that area that have over six feet of water at mean low water. As the existing anchorage is extensively used by recreational vessels, the new anchorage areas will accommodate vessels that will be displaced when the new piers are built. There has been considerable public interest in establishing new anchorages to replace the existing anchorage since the marina plans were published in the local newspaper. The new anchorages are already being used by recreational vessels as overflow from the existing anchorage. To date, no problems have

arisen from recreational vessels anchoring in these areas.

Ashley River Anchorage Number One is located on the waters lying within an area across the Ashley River Channel from the George M. Lockwood Municipal Marine bounded by the southwest side of the channel beginning at latitude 32°46′43.7″ N, longitude 079°57′19.3″ W; thence to latitude 32°46′38.0″ N, longitude 079°57′24.0″ W; thence to latitude 32°46′32.0″ N, longitude 079°57′15.5″ W; thence to latitude 32°46′29.0″ N, longitude 079°57′00.9″ W; thence back to the beginning following the southwest boundary of the Ashley River Channel. All coordinates referenced use datum: NAD 1983.

Ashley River Anchorage Number Two is located on the waters lying within an area across the Ashley River Channel from the Ashley Marina bounded by the southwest side of the channel beginning at latitude 32°46′53.0″ N, longitude 079°57′34.5″ W; thence to latitude 32°46′50.5″ N, longitude 079°57′40.5″ W; thence to latitude 32°46′46.0″ N, longitude 079°57′34.5″ W; thence to latitude 32°46′49.0″ N, longitude 079°57′28.7″ W; thence back to the beginning following the southwest boundary of the Ashley River Channel. All coordinates referenced use datum: NAD 1983.

These anchorage areas provide that vessels no more than sixty-five feet in length when anchored in the anchorage areas shall not be required to carry or exhibit the white anchor lights required by the Navigation Rules.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. These anchorage areas described in this notice are currently being used by recreational vessels as overflow from the existing anchorage.

Since the impact of this is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and has determined pursuant to Section 2.B.2. of Commandant Instruction M16475.1B, that this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are available in the docket for inspection or copying at the same location listed in **ADDRESSES.**

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulations

In consideration of the foregoing, the Coast Guard amends Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.72d is revised to read as follows:

§ 110.72d Ashley River anchorage areas, SC.

The following locations are special anchorage areas:

(a) Ashley River Anchorage 1. The waters lying within an area across the Ashley River Channel from the George M. Lockwood Municipal Marina bounded by the southwest side of the channel beginning at latitude 32°46′43.7″N, longitude 079°57′19.3″W; thence to latitude 32°46′38.0″N, longitude 079°57′24.0″W; thence to latitude 32°46′32.0″N, longitude 079°57′15.5″W; thence to latitude 32°46′29.0″N, longitude 079°57′00.9″W; thence back to the beginning following the southwest boundary of the Ashley River Channel. All coordinates referenced use datum: NAD 1983.

(b) Ashley River Anchorage 2. The waters lying within an area across the Ashley River Channel from the Ashley Marina bounded by the southwest side of the channel beginning at latitude 32°46′53.0″N, longitude 079°57′34.5″W; thence to latitude 32°46′50.5″N, longitude 079°57′40.5″W; thence to latitude 32°46′46.0″N, longitude 079°57′34.5″W; thence to latitude 32°46′49.0″N, longitude 079°57′28.7″W; thence back to the beginning following the southwest boundary of the Ashley River Channel. All coordinates referenced use datum: NAD 1983.

Dated: July 22, 1996.

John W. Lockwood,

U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 96–20018 Filed 8–6–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD13–96–015]

RIN 2115–AA97

Safety Zone Regulation; Seafair's U.S. Navy Blue Angels Air Show, Elliott Bay, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting a temporary safety zone regulation for the U.S. Navy Blue Angels Air Show sponsored by Seafair Incorporated on 8, 9, 10, and 11 August, 1996, over Elliott Bay, Seattle, Washington. The Captain of the Port Puget Sound, Seattle, Washington, is taking this action to safeguard watercraft and their occupants from the safety hazards associated with high performance aircraft conducting difficult maneuvers at low altitudes. The safety zone will encompass the area of Elliott Bay over which the air show will take place. Entry into this safety zone will be prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on the following dates and times: commencing August 8, 1996, at 1 p.m. (PDT) and terminating August 8, 1996, at 4 p.m. (PDT); commencing August 9, 1996, at 2 p.m. (PDT) and terminating August 9, 1996, at 4 p.m. (PDT); commencing August 10, 1996, at 2 p.m. (PDT) and terminating August 10, 1996, at 4 p.m. (PDT); and commencing August 11, 1996, at 2 p.m. (PDT) and terminating August 11, 1996, at 4 p.m. (PDT). The Captain of the Port may

sooner terminate this safety zone each day if it becomes unnecessary.

ADDRESSES: Documents referred to in this preamble are available for inspection or copying at U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building One, Seattle, WA 98134. Normal office hours are between 7 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG A. Baribeau, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation. However, good cause exists for not following normal rulemaking procedures. Publishing a NPRM would be contrary to the public interest since immediate action is necessary to ensure the safety of vessels and spectators operating in the area of the Air Show. Due to the complex planning and coordination involved, the sponsor of the event, Seafair Incorporated, was unable to provide the Coast Guard with the final details for the show until 60 days prior to the event. Therefore, sufficient time was not available to publish a proposed rule in advance of the event. Following normal rulemaking procedures in this case would be impracticable.

Background and Purpose

The Coast Guard is adopting a temporary safety zone regulation for the U.S. Navy Blue Angels Air Show sponsored by Seafair, Incorporated. The safety zone encompasses all waters of Puget Sound bounded by a line beginning at position latitude 47° 37.48.0′ N, longitude 122° 25.11.4′ W; thence to latitude 47° 37.21.7′ N, longitude 122° 25.31.6′ W; thence to latitude 47° 36.05.8′ N, longitude 122° 21.55.1′ W' thence to latitude 47° 36/ 47.9′ N, longitude 122° 21.22.8′W; and thence returning to the point of origin (NAD 83). The zone is needed to protect watercraft and their occupants from safety hazards associated with high performance aircraft conducting complex maneuvers at high speeds and low altitudes. Many onlookers may attempt to view the air show at close range, thereby increasing their exposure to these hazards. Entry into the safety zone will be prohibited during the air show and practice sessions. This safety zone will be enforced by representatives of the Captain of the Port Puget Sound, Seattle, Washington. The Captain of the Port may be assisted by other federal agencies.

Regulator Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The regulated area established by the proposed regulation would encompass approximately 4.75 square miles in Elliott Bay from Magnolia Bluff across the Bay to the Coleman Dock on the Seattle waterfront. Entry into the regulated area would be restricted for less than four hours during each of the four days during the performances. Maritime commerce can plan the transits of the area around the scheduled event.

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601) *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. For the reasons set forth above the impacts of this proposal are expected to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposal will not have a significant impact on a substantial number of small entities.

Environment

The Coast Guard considered the environmental impact of this proposed regulation and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this rule is categorically excluded from further environmental documentation. Appropriate environmental analysis of the U.S. Navy Blue Angels Air Show sponsored by Seafair Incorporated will be in conjunction with the marine event permitting process. Any environmental documentation required under the National Environmental Policy Act will be completed prior to the issuance of a marine event permit for this event.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new Section 165.T–3009 is added to read as follows:

§ 165.T1–3009 Safety Zone: Elliott Bay, Seattle, Washington.

(a) *Regulated Area.* The following area is a safety zone: All waters of Elliott Bay, Seattle, Washington bounded by a line beginning at position latitude 47°37.48.0′N, longitude 122°25.11.4′W; thence to latitude 47°37.21.7′N, longitude 122°25.31.6′W; thence to latitude 47°36.05.8′N, longitude 122°21.55.1′W; thence to latitude 47°36.47.9′N, longitude 122°21.22.8′W; thence returning to the point of origin.

(NAD 83) (b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port Puget Sound, to act on his behalf. The following officers have or will be designated by the Captain of the Port: The Commissioned, warrant, and petty officers assigned to Coast Guard Station Seattle, USCGC CUTTYHUNK, and USCGC POINT RICHMOND.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited, unless authorized by the Captain of the Port or his designated representatives.

(d) *Effective Dates.* This regulation is effective on the following dates and times: commencing August 8, 1996, at 1 p.m. (PDT) and terminating August 8, 1996, at 4 p.m. (PDT); commencing August 9, 1996, at 2 p.m. (PDT) and

terminating August 9, 1996, at 4 p.m. (PDT); commencing August 10, 1996, at 2 p.m. (PDT) and terminating August 10, 1996 at 4 p.m. (PDT); and commencing August 11, 1996, at 2 p.m. (PDT) and terminating August 11, 1996, at 4 p.m. (PDT). The Captain of the Port may sooner terminate this safety zone each day if it becomes necessary.

Dated: July 3, 1996.

Myles S. Boothe,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 96–20019 Filed 8–6–96; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 31

RIN 1024–AC51

Indiana Dunes National Lakeshore: Zoning Standards

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is deleting Part 31 of Title 36 of the Code of Federal Regulations (CFR), Zoning Standards for Indiana Dunes National Lakeshore. This deletion is necessary because Section 5 of the enabling legislation for the National Lakeshore, which authorized the Secretary of the Interior to promulgate minimum zoning standards, which, if complied with by local governments, would exempt private property within the boundaries of Lakeshore from condemnation by the United States, has been repealed. Therefore, 36 CFR part 31 is no longer needed.

EFFECTIVE DATE: The rule will become effective on August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Superintendent, Indiana Dunes National Lakeshore, 1100 N. Mineral Springs Road, Porter, IN 46304. Telephone 219–926–7561.

SUPPLEMENTARY INFORMATION:

Background

Section 5 of the enabling legislation for Indiana Dunes National Lakeshore of November 5, 1966 (80 Stat. 1309), authorized the Secretary of the Interior to promulgate minimum zoning standards which, if complied with by local governments, would exempt private property within the boundaries of the National Lakeshore from condemnation by the United States. Section 1(9) of the Act of October 18, 1976 (90 Stat. 2533), repealed Section 5 of the enabling legislation. Therefore, 36 CFR part 31 is no longer in effect.

The purpose of this action is to delete the zoning standards for Indiana Dunes National Lakeshore because they are no longer valid. The regulations in this part were originally established in accordance with the enabling legislation for the National Lakeshore in 1966 to assist in administering, preserving and developing the unit. Subsequent legislation passed in 1976 made these regulations obsolete.

Administrative Procedure Act

In accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(B)), the NPS is promulgating this rule under the ''good cause'' exception of the Act from general notice and comment rulemaking. As discussed above, the NPS believes this exception is warranted because the existing rules are no longer in effect. This final rule will not impose any additional restrictions on the public and comments on this rule are deemed unnecessary. Based upon this discussion, the NPS finds pursuant to 5 U.S.C. 533(b)(B) that it would be contrary to the public interest to publish this rule through general notice and comment rulemaking.

The NPS also believes that publishing this final rule 30 days prior to the rule becoming effective would be counterproductive and unnecessary for the reasons discussed above. A 30-day delay in this instance would be unnecessary and contrary to the public interest. Therefore, under the ''good cause'' exception of the Administrative Procedure Act (5 U.S.C. 553(d)(3)), it has been determined that this final rulemaking is excepted from the 30-day delay in the effective date and will therefore become effective on the date published in the Federal Register.

Drafting Information

The primary author of this rule is Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Paperwork Reduction Act

This final rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are nonexistent.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

The NPS has determined that this interim rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce non-compatible uses which compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this final rule is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

List of Subjects in 36 CFR Part 31

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS is amending 36 CFR Chapter I as follows:

PART 31—INDIANA DUNES NATIONAL LAKESHORE: ZONING STANDARDS

1. The authority citation for part 31 continues to read as follows:

Authority: Sec. 5, 80 Stat. 1309, sec. 3, 39 Stat. 535; 16 U.S.C. 3, 460u.

PART 31—[REMOVED]

2. 36 CFR Part 31 is removed.

Dated: July 18, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–19958 Filed 8–6–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 101 and 102

Under Secretary for Technology

37 CFR Part 501

[Docket No. 960604157–6157–01]

RIN 0692–AA15

Acquisition and Protection of Foreign Rights in Inventions; Licensing of Foreign Patents Acquired by the Government; Uniform Patent Policy for Rights in Inventions Made by Government Employees

AGENCY: Patent and Trademark Office; Under Secretary for Technology, Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: The interim final rule removes the regulation dealing with the Government's foreign rights in inventions made by Government employees, and expands the uniform patent policy for domestic rights in inventions to include foreign rights in order to have a uniform patent policy for all rights in inventions made by Government employees. The rule also removes the regulation dealing with the licensing of foreign patents acquired by the Government, which is inconsistent with 37 CFR Part 404 on the licensing of Government-owned inventions. This action is taken in keeping with the goals of the National Performance Review and in order to comply with recent Executive Orders that address regulatory reforms.

The rule also revises the uniform patent policy to permit an agency to impose certain conditions on the employee's title to the invention where the agency decides not to file a patent application, some of which are authorized by § 15 of the Federal Technology Transfer Act of 1986; to require agencies to provide the inventor, prior to appeal, with a full explanation of the agency determination and a copy of 37 CFR Part 501 in all cases where the agency has determined that the Government is entitled to title or a license in the invention in order to reduce the number of appeals; and to require agencies to decide if they should file any foreign patent applications within 8 months from filing a patent application in the U.S. or to authorize agencies to use an option to acquire foreign rights from the employee in order to avoid the need to transfer back the foreign rights to the employee if the agency does not file a foreign patent application within 8 months of filing an unclassified patent application in the U.S.

DATES: This document is effective August 7, 1996.

Comments on the rule must be received on or before September 5, 1996.

The regulations will apply to any Rights Determination made after August 7, 1996.

ADDRESSES: Comments on the rule may be mailed to Mr. John Raubitschek, Patent Counsel, Office of the Chief Counsel for Technology, Room 4610, Herbert C. Hoover Building, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. John Raubitschek at telephone: (202) 482–8010.

SUPPLEMENTARY INFORMATION: Under the authority of section 4, E.O. 10096, CFR, 1949–1953 Comp., p. 292, as amended by E.O. 10930, 3 CFR, 1959–1963 Comp., p. 456 and by E.O. 10695, 3 CFR, 1954–1958 Comp., p. 355; and the delegation by the Secretary of Commerce in DOO 10–17 and DOO 10–18, the Under Secretary of Commerce for Technology is amending 37 CFR Part 501 to include the relevant portions of former 37 CFR Part 101 to reduce duplication and streamline the regulations.

On March 4, 1995, as part of the President's Regulatory Reform Initiative, the President directed agencies to conduct a page-by-page review of all regulations and eliminate or revise those that are outdated or otherwise in need of reform.

Under the former rules, foreign rights in inventions made by Government employees were covered by 37 CFR Part 101 while domestic rights were covered by 37 CFR Part 501. After conducting a review of 37 CFR Parts 101 and 501, it was determined that some sections in Part 101 were no longer being followed by the agencies and others were interpreted by agencies in an inconsistent manner. This review also determined that Part 101 should be removed and Part 501 should be amended to cover both foreign and domestic rights, so as to have a uniform policy for the Government's domestic and foreign rights in inventions made by Government employees. It is noted that E.O. 10096 is not limited to domestic rights in invention made by Government employees.

Accordingly, 37 CFR Part 101 is removed and reserved, and 37 CFR Part 501 is amended as follows:

The title of Part 501 is changed to delete the reference to ''domestic'' rights so that this part will now cover both ''domestic'' and ''foreign'' rights.

The authority section is changed to make reference (1) to E.O. 10695, 3 CFR, 1954–1958 Comp., p. 355, which also amended E.O. 10096; and (2) to the latest DOO 10–17 and 10–18, issued July 15, 1992, and March 31, 1994, respectively.

Section 501.1 is changed to delete ''domestic'' so that this part will now cover both ''domestic'' and ''foreign'' rights.

Section 501.3(a) is editorially amended by adding a comma (,) after ''Secretary.''

Section 501.3(b) retains the exclusion of the Department of Energy although it follows the procedures in Part 501 because the exemption for this agency is contained in E.O. 10096. Also, the Tennessee Valley Authority and the Postal Service are excluded consistent with existing practice.

Section 501.3(c) is changed to clearly indicate that the definition of ''Government employee'' includes any special Government employee as defined in 18 U.S.C. 202 or an individual working for a Federal agency pursuant to the Intergovernmental Personnel Act (IPA), Pub. L. 91–648, 5 U.S.C. 1304 and 3371–3376. This section is also being changed to provide a reference to the statute which defines the term ''part-time employee.''

Section 501.3(d) is changed to further define the term ''art'' as a ''process'' which is the equivalent term used by the Patent and Trademark Office (35 U.S.C. 100(b)).

New paragraph (e) is added to § 501.3 to define the term ''made'' when used in relation to any invention as the conception or first actual reduction to practice of such invention. See *In re King,* 3 USPQ2d (BNA) 1747 (Comm'r Pat. 1987).

Section 501.4 is changed to make reference to E.O. 10695, 3 CFR, 1954–1958 Comp., p. 355, which also amended E.O. 10096. This section is also being editorially amended by deleting ''therein'' in the section title; adding ''in and to the invention'' after ''rights;'' deleting the words ''therein'' and ''herein;'' and adding ''§'' before ''501.6.''

Section 501.6(a)(1) is changed to delete the reference to ''domestic'' rights so that this section will now cover both ''domestic'' and ''foreign'' rights.

Section 501.6(a)(1)(iii) is changed to delete the reference to 37 CFR Part 101 which is being removed.

Section 501.6(a)(2) is changed to delete ''domestic'' (twice) so that this

section will now cover both ''domestic'' and ''foreign'' rights. Also, the last five lines in the first sentence of this section is being editorially amended by replacing ''purposes, such reservation, in terms thereof, to appear'' with ''purposes. The terms of such reservation will appear.''

Section 501.6(a)(3)(i) is changed to further define the term ''art'' as a ''process'' which is the equivalent term used by the Patent and Trademark Office (35 U.S.C. 100(b)).

Section 501.6(a)(4)(i) is changed to delete ''domestic'' so that this section will now cover both ''domestic'' and ''foreign'' rights.

Section 501.7(b) is revised to allow agencies to impose certain conditions where the Government decides not to file a patent application. Some of these conditions are contained in section 15 of the Federal Technology Transfer Act (15 U.S.C. 3710(a)) which permits an agency to condition the inventor's right to title on the timely filing of a patent application in cases if it determines that the Government has a need to practice the invention. Other conditions are taken from the licensing regulation in 37 CFR Part 404.

Section 501.7(c) is revised to require the agency to provide to the employee (inventor) a signed and dated statement of its determination and reasons therefor, as well as a copy of 37 CFR 501 in all cases where the agency has determined that the Government is entitled to title or a license in the invention. It is expected that the revised § 501.7(c) will help reduce the number of appeals since an inventor will now be provided with a full explanation for the initial determination of the agency without having to file an appeal. Also, by giving the inventor a copy of 37 CFR Part 501, it is ensured that the inventor will become better aware of all his/her rights under 37 CFR Part 501. It should be noted that some of the information previously required by both §§ 501.7(c) and 501.8(b) appears now only in § 501.8 (b)(2) and (b)(3) so that such information is needed only when an appeal has been filed.

Section 501.8(a) is changed to clearly indicate that the Secretary shall forward one copy of the appeal to the liaison officer of the Government agency. This change will ensure conformance with § 501.5.

Section 501.8(b) is changed to indicate that the agency liaison officer will be the person in charge of furnishing the report to the Secretary and the inventor.

Section 501.8(b)(1) is modified to delete the reference to information which is no longer required by § 501.7.

Section 501.8 (b)(2) and (b)(3) are added to include information which was required by §§ 501.(7) (c)(1) and (c)(2).

Section 501.8(b)(4) is former § 501.8(b)(2) and changed to indicate that a copy of the reply by the employee must be filed with the agency liaison officer. This section is also being editorially amended by deleting the words ''thereto'' and ''thereof'' and moving the last sentence so that it is part of § 501.8(b).

Section 501.9(a) is changed to require a ''prompt'' determination by the agency about whether to seek patent protection in the United States, which may include the filing of a provisional application. The section would now explicitly allow any other agency or private law firm authorized by the agency to seek patent protection on its behalf.

Section 501.9(b) is changed by replacing ''will'' with ''may'' to remove the requirement that an agency determine whether patent protection will be sought pending the Secretary's decision on the dispute. The agency will now have the choice of seeking patent protection pending the Secretary's decision on the dispute. This section is also being editorially amended by dividing a long sentence into two sentences.

Section 501.9(c) is editorially amended by adding a comma (,) after ''patent.''

New section 501.9(d) is added to give agencies 8 months from the filing date of a patent application in the U.S. to decide if and where they should file foreign patent applications. It is anticipated that agencies will defer the selection of individual foreign countries by filing an international application under the Patent Cooperation Treaty. If an agency chooses not to file in any foreign country, then the employee may request rights in that country subject to any of the restrictions stated in § 501.7(b) that may be imposed by the agency. It should be noted that under this section, the rights would no longer be retained by the inventor in any foreign country if the agency does not cause a patent application to be filed in that country within certain time periods previously set forth in 37 CFR 101.8. However, § 501.9(d) authorizes agencies to use an option to acquire foreign rights from the employee similar to that in 37 CFR 101.8 except that the time for exercising the option has been increased from 6 to 8 months from the filing of an unclassified application in the U.S., which is presently the practice in the Department of Army and National Aeronautics and Space Administration. Use of such an option will avoid the need to transfer back any foreign rights to the employee when the agency chooses not to file a patent application in any foreign country although such transfer is now authorized under section 6 of Pub. L. 104–113. If an agency determines that it wants to file a foreign patent application after the 8-month option period has expired, it may do so only after obtaining an assignment of the foreign rights from the employee.

New section 501.11 is added to provide the address where any submissions or inquiries should be sent.

Part 102 was established under the authority of Executive Order 9865 to provide for the administration of a uniform policy for the licensing of foreign patents owned by the Government. In 1980 under Pub. L. 96–517, all Government agencies were given authority to obtain and license foreign and domestic patents. The procedures for granting a license are contained in 37 CFR Part 404 and conflicts with Part 102 in a number of respects. Since agencies no longer need the authority of Executive Order 9865, it was determined to cancel Part 102.

Pursuant to § 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 553) (APA), the Under Secretary of Commerce for Technology finds that the interim final rule involves a matter relating to agency personnel since it concerns the foreign and domestic rights in inventions made by Government employees; therefore, the rule is exempted from the prior notice of proposed rulemaking and the delayed effective date requirements. Furthermore, the rule provides a 30-day comment period and any comments received will be considered prior to finalization of the interim rule.

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

The rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for the interim final rule by section 553 of the APA (5 U.S.C. 553) or by any other law, under sections 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

The interim final rule does not involve a collection of information under the Paperwork Reduction Act.

List of Subjects

37 CFR Part 101

Foreign rights in inventions, Inventions made by Government employees.

37 CFR Part 102

Licensing of foreign patents acquired by the Government.

37 CFR Part 501

Uniform patent policy, Domestic rights in inventions, Inventions made by Government employees, Foreign rights in inventions.

For the reasons set forth in the preamble and under authority of 5 U.S.C. 301, 37 CFR chapters I and V are amended as follows:

CHAPTER I—PATENT AND TRADEMARK OFFICE, DEPARTMENT OF COMMERCE

PART 101—[REMOVED AND RESERVED]

1. Part 101 is removed and reserved.

PART 102—[REMOVED AND RESERVED]

2. Part 102 is removed and reserved.

CHAPTER V—UNDER SECRETARY FOR TECHNOLOGY, DEPARTMENT OF COMMERCE

PART 501—UNIFORM PATENT POLICY FOR RIGHTS IN INVENTIONS MADE BY GOVERNMENT EMPLOYEES

3. The authority citation for 37 CFR part 501 is revised to read as follows:

Authority: Sec. 4, E.O. 10096, 3 CFR, 1949–1953 Comp., p. 292, as amended by E.O. 10930, 3 CFR, 1959–1963 Comp., p. 456 and by E.O. 10695, 3 CFR, 1954–1958 Comp., p. 355; DOO 10–17, July 15, 1992, and DOO 10–18, March 31, 1994.

4. The heading of part 501 is revised as set forth above.

5. Section 501.1 is revised to read as follows:

§ 501.1 Purpose.

The purpose of this part is to provide for the administration of a uniform patent policy for the Government with respect to the rights in inventions made by Government employees and to prescribe rules and regulations for implementing and effectuating such policy.

6. Section 501.3 is revised to read as follows:

§ 501.3 Definitions.

(a) The term *Secretary*, as used in this part, means the Under Secretary of Commerce for Technology.

(b) The term *Government agency*, as used in this part, means any Executive department or independent establishment of the Executive branch of the Government (including any independent regulatory commission or board, any corporation wholly owned by the United States, and the Smithsonian Institution), but does not include the Department of Energy for inventions made under the provisions of 42 U.S.C. 2182, the Tennessee Valley Authority, or the Postal Service.

(c) The term *Government employee*, as used in this part, means any officer or employee, civilian or military, of any Government agency, including any special Government employee as defined in 18 U.S.C. 202 or an individual working for a Federal agency pursuant to the Intergovernmental Personnel Act (IPA), 5 U.S.C. 1304 and 3371–3376, or a part-time consultant or part-time employee as defined in 29 U.S.C. 2101(a)(8) except as may otherwise be provided by agency regulation approved by the Secretary.

(d) The term *invention*, as used in this part, means any art or process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States.

(e) The term *made* as used in this part in relation to any invention, means the conception or first actual reduction to practice of such invention as stated in *In re King*, 3 USPQ2d (BNA) 1747 (Comm'r Pat. 1987).

7. Section 501.4 is revised to read as follows:

§ 501.4 Determination of inventions and rights.

Each Government agency has the approval of the Secretary to determine whether the results of research, development, or other activity in the agency constitute an invention within the purview of Executive Order 10096, as amended by Executive Order 10930 and Executive Order 10695, and to determine the rights in and to the invention in accordance with the provisions of §§ 501.6 and 501.7.

8. Section 501.6 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(iii), (a)(2), (a)(3)(i) and (a)(4)(i) to read as follows:

§ 501.6 Criteria for the Determination of rights in and to inventions.

(a) * * *

(1) The Government shall obtain, except as herein otherwise provided, the entire right, title and interest in and to any invention made by any Government employee:

* * * * *

(iii) Which bears a direct relation to or is made in consequence of the official duties of the inventor.

(2) In any case where the contribution of the Government, as measured by any one or more of the criteria set forth in paragraph (a)(1) of this section, to the invention is insufficient equitably to justify a requirement of assignment to the Government of the entire right, title and interest in and to such invention, or in any case where the Government has insufficient interest in an invention to obtain the entire right, title and interest therein (although the Government could obtain same under paragraph (a)(1) of this section), the Government agency concerned shall leave title to such invention in the employee, subject however, to the reservation to the Government of a nonexclusive, irrevocable, royalty-free license in the invention with power to grant licenses for all governmental purposes. The terms of such reservation will appear, where practicable, in any patent, domestic or foreign, which may issue on such invention. Reference is made to section 15 of the Federal Technology Transfer Act of 1986 (15 U.S.C. 3710d) which requires a Government agency to allow the inventor to retain title to any covered invention when the agency does not intend to file a patent application or otherwise promote commercialization.

(3) * * *

(i) To invent or improve or perfect any art or process, machine, design, manufacture, or composition of matter;

* * * * *

(4) * * *

(i) Obtains the entire right, title and interest in and to an invention pursuant to the provisions of paragraph (a)(1) of this section nor

* * * * *

9. Section 501.7 is amended by revising paragraphs (b) and (c) to read as follows:

§ 501.7 Agency determination.

* * * * *

(b) In the event that a Government agency determines, pursuant to paragraph (a)(2) or (a)(4) of § 501.6, that title to an invention will be left with the employee, the agency shall notify the employee of this determination. In cases pursuant to § 501.6(a)(2) where the Government's insufficient interest in the invention is evidenced by its decision not to file a patent application, the agency may impose on the employee any one or all of the following conditions or any other conditions that may be necessary in a particular case:

(1) That a patent application be filed in the United States and/or abroad, if

the Government has determined that it has or may need to practice the invention;

(2) That the invention not be assigned to any foreign-owned or controlled corporation without the written permission of the agency; and

(3) That any assignment or license of rights to use or sell the invention in the United States shall contain a requirement that any products embodying the invention or produced through the use of the invention be substantially manufactured in the United States. The agency shall notify the employee of any conditions imposed.

(c) In the case of a determination under either paragraph (a) or (b) of this section, the agency shall promptly provide the employee with:

(1) A signed and dated statement of its determination and reasons therefor; and

(2) A copy of 37 CFR part 501.

10. Section 501.8 is amended by revising paragraphs (a) and (b), redesignating paragraphs (c) and (d) as paragraph (d) and (e), and adding new paragraph (c) to read as follows:

§ 501.8 Appeals by employees.

(a) Any Government employee who is aggrieved by a Government agency determination pursuant to §§ 501.6(a)(1) or (a)(2), may obtain a review of any agency determination by filing, within 30 days (or such longer period as the Secretary may, for good cause shown in writing, fix in any case) after receiving notice of such determination, two copies of an appeal with the Secretary. The Secretary then shall forward one copy of the appeal to the liaison officer of the Government agency.

(b) On receipt of a copy of an appeal filed pursuant to paragraph (a) of this section, the agency liaison officer shall, subject to considerations of national security, or public health, safety or welfare, promptly furnish both the Secretary and the inventor with a copy of a report containing the following information about the invention involved in the appeal:

(1) A copy of the agency's statement specified in § 501.7(c);

(2) A description of the invention in sufficient detail to identify the invention and show its relationship to the employee's duties and work assignments;

(3) The name of the employee and employment status, including a detailed statement of official duties and responsibilities at the time the invention was made; and

(4) A detailed statement of the points of dispute or controversy, together with copies of any statements or written arguments filed with the agency, and of any other relevant evidence that the agency considered in making its determination of Government interest.

(c) Within 25 days (or such longer period as the Secretary may, for good cause shown, fix in any case) after the transmission of a copy of the agency report to the employee, the employee may file a reply with the Secretary and file one copy with the agency liaison officer.

* * * * *

11. Section 501.9 is revised to read as follows:

§ 501.9 Patent protection.

(a) A Government agency, upon determining that an invention coming within the scope of §§ 501.6(a)(1) or (a)(2) has been made, shall promptly determine whether patent protection will be sought in the United States by or on behalf of the agency for such invention. A controversy over the respective rights of the Government and of the employee shall not unnecessarily delay the filing of a patent application by the agency to avoid the loss of patent rights. In cases coming within the scope of § 501.6(a)(2), the filing of a patent application shall be contingent upon the consent of the employee.

(b) Where there is an appealed dispute as to whether §§ 501.6 (a)(1) or (a)(2) applies in determining the respective rights of the Government and of an employee in and to any invention, the agency may determine whether patent protection will be sought in the United States pending the Secretary's decision on the dispute. If the agency decides that an application for patent should be filed, the agency will take such rights as are specified in § 501.6(a)(2), but this shall be without prejudice to acquiring the rights specified in paragraph (a)(1) of that section should the Secretary so decide.

(c) Where an agency has determined to leave title to an invention with an employee under § 501.6(a)(2), the agency will, upon the filing of an application for patent, take the rights specified in that paragraph without prejudice to the subsequent acquisition by the Government of the rights specified in paragraph (a)(1) of that section should the Secretary so decide.

(d) Where an agency has filed a patent application in the United States, the agency will, within 8 months from the filing date of the U.S. application, determine if any foreign patent applications should also be filed. If the agency chooses not to file an application in any foreign country, the employee may request rights in that country subject to the conditions stated in § 501.7(b) that may be imposed by the agency. Alternatively, the agency may permit the employee to retain foreign rights by including in any assignment to the Government of an unclassified U.S. patent application on the invention an option for the Government to acquire title in any foreign country within 8 months from the filing date of the U.S. application.

12. A new § 501.11 is added to read as follows:

§ 501.11 Submissions and inquiries.

All submissions or inquiries should be directed to Chief Counsel for Technology, telephone number 202–482–1984, Room H4835, U.S. Department of Commerce, Washington DC 20230.

Dated: July 22, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

Dated: July 26, 1996.

Mary L. Good,

Under Secretary of Commerce for Technology.

[FR Doc. 96–19713 Filed 8–6–96; 8:45 am]

BILLING CODE 3510–18–P; 3510–16–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–11

[FPMR Interim Rule B–1]

RIN 3090–AG02

Relocation of FIRMR Provisions Relating to GSA's Role in the Records Management Program

AGENCY: Office of Policy, Planning and Evaluation, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: This regulation reestablishes certain Federal Information Resources Management Regulation (FIRMR) provisions regarding records management in the Federal Property Management Regulations (FPMR). This action is necessary because the FIRMR is being abolished as of 12 midnight on August 8, 1996.

DATES: This rule is effective August 8, 1996. Comments are solicited and are due October 7, 1996.

Expiration Date: December 31, 1997.

ADDRESSES: Comments may be mailed to General Services Administration, Office of Policy, Planning and Evaluation, Strategic IT Analysis Division (MKS), 18th & F Streets, NW., Room 3224, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall or Pat Smith of the

Office of Policy, Planning and Evaluation, Strategic IT Analysis Division (MKS), 18th & F Streets, NW., Room 3224, Washington, DC 20405, telephone FTS/Commercial (202) 501–4469 or (202) 501–0657 (tdd), or Internet (stewart.randall@gsa.gov. or pat.smith@gsa.gov).

SUPPLEMENTARY INFORMATION: (1) The President signed the National Defense Authorization Act (NDAA) for Fiscal Year 1996, Pub. L. 104–106, on February 10, 1996. Included in the NDAA was the Information Technology (IT) Management Reform Act of 1996 (ITMRA). Section 5101 of the Act repeals section 111 of the Federal Property and Administrative Services Act of 1949, as amended (the Brooks Act) (40 U.S.C. 759). The Brooks Act was the authority for most of the provision in GSA's Federal Information Resources Management Regulation so that the Brooks Act repeal effectively disestablishes the FIRMR. Therefore, any FIRMR provisions that are still needed, such as Part 201–9–Records Management, are being removed from the FIRMR and reestablished in the appropriate regulation.

(2) GSA has determined that this rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993, because it is not likely to result in any of the impacts noted in Executive Order 12866, affect the rights of specified individuals, or raise issues arising from the policies of the Administration. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–11

Archives and records, Computer technology, Telecommunications, Government procurement, Property management, Records management, and Federal information processing resources activities.

For the reasons set forth in the preamble, 41 CFR Chapter 101 is amended by adding subchapter B, consisting of part 101–11, to read as follows:

SUBCHAPTER B—MANAGEMENT AND USE OF INFORMATION AND RECORDS

PART 101–11—CREATION, MAINTENANCE, AND USE OF RECORDS

Subpart 101–11.0 General Provisions

Sec.
101–11.0 Scope of part.
101–11.1 General.

Subpart 101–11.1—Agency Programs

101–11.100 Scope of subpart.
101–11.101 General.
101–11.102 Policy.
101–11.103 Procedures.

Subpart 101–11.2—GSA Governmentwide Programs

101–11.200 Scope of subpart
101–11.201 General.
101–11.202 Governmentwide programs.
101–11.203 Standard and Optional Forms Management Program.
101–11.204 Interagency Reports Management Program.

Authority: 40 U.S.C. 486(c).

Subpart 101–11.0 General Provisions

§ 101–11.0 Scope of part.

This part prescribes policies and procedures for the creation, maintenance, and use of Federal agencies' records. Unless otherwise noted, the policies and procedures of this part apply to all records, regardless of medium (i.e., paper, electronic, or other).

§ 101–11.1 General.

(a) Chapters 29 and 31 of title 44 of the United States Code (U.S.C.), require the establishment of standards and procedures to ensure efficient and effective records management by Federal agencies. The statutory goals of these standards and procedures include:

(1) Accurate and complete documentation of the policies and transactions of the Federal Government;

(2) Control of the quantity and quality of records produced by the Federal Government;

(3) Establishment and maintenance of mechanisms of control with respect to records creation in order to prevent the creation of unnecessary records and with respect to the effective and economical operations of an agency;

(4) Simplification of the activities, systems, and processes of records creation, maintenance, and use;

(5) Judicious preservation and disposal of records; and

(6) Direction of continuing attention on records from their initial creation to their final disposition, with particular emphasis on the prevention of unnecessary Federal paperwork.

(b) The law assigns records management responsibilities to the Administrator of General Services (the Administrator), the Archivist of the United States (the Archivist), and the heads of Federal agencies.

(1) The Administrator is responsible for providing guidance and assistance to Federal agencies to ensure economical and effective records management. Records management policies and guidance established by GSA are contained in FPMR Part 101–11, records management handbooks, and other publications issued by GSA.

(2) The Archivist is responsible for providing guidance and assistance to Federal agencies to ensure adequate and proper documentation of the policies and transactions of the Federal Government and to ensure proper records disposition. Records management policies and guidance established by the Archivist are contained in regulations in 36 CFR chapter XII and in bulletins and handbooks issued by the National Archives and Records Administration (NARA).

(3) The heads of Federal agencies are responsible for complying with the policies and guidance provided by the Administrator and the Archivist.

Subpart 101–11.1—Agency Programs

§ 101–11.100 Scope of subpart.

This subpart prescribes policies and procedures for establishing and maintaining an agency records management program.

§ 101–11.101 General.

Section 3102 of title 44 of the U.S.C. requires each Federal agency to establish an active and continuing records management program.

§ 101–11.102 Policy.

Each Federal agency shall establish and maintain an active, continuing program for managing agency records, commensurate with agency size, organization, mission, and recordkeeping activity.

§ 101–11.103 Procedures.

Each Federal agency shall take the following actions to establish and maintain the agency's records management program:

(a) Assign specific responsibility for the development and implementation of agencywide records management programs to an office of the agency and to a qualified records manager.

(b) Consider the guidance contained in GSA and NARA handbooks and bulletins when establishing and

implementing agency records management programs.

(c) Issue a directive establishing program objectives, responsibilities, authorities, standards, guidelines, and instructions for its records management program.

(d) Apply appropriate records management practices to all records, irrespective of the medium (e.g., paper, electronic, or other) on which the record resides.

(e) Control the creation, maintenance, and use of agency records and the collection and dissemination of information to ensure that the agency:

(1) Does not accumulate unnecessary records;

(2) Does not create forms and reports that collect information inefficiently or unnecessarily;

(3) Periodically reviews all existing forms and reports (both those originated by the agency and those responded to by the agency but originated by another agency or branch of Government) to determine if they need to be improved or canceled;

(4) Maintains its records cost effectively and in a manner that allows them to be retrieved quickly and reliably; and

(5) Keeps its mailing and copying costs to a minimum.

(f) Standardize stationery in terms of size, letterhead design, color (of originals, record copies, and envelopes), markings that are permitted on envelopes and postcards, and number of stationery styles permitted.

(g) Consider the voluntary standards contained in the Table of Standard Specifications in the FPMR, when developing agency stationery standards.

(h) Establish agency standards regarding the types of correspondence to be used in official agency communications, and the number and kind of copies required and their distribution and purpose.

(i) Strive to:

(1) Improve the quality, tone, clarity, and responsiveness of correspondence, and provide for its creation in a timely, economical, and efficient manner;

(2) Design forms that are easy to fill-in, read, transmit, process, and retrieve; and reduce forms reproduction costs;

(3) Provide agency managers with the means to convey written instructions to users and document agency policies and procedures through effective directives management;

(4) Provide agency personnel with the information needed in the right place, at the right time, and in a useful format;

(5) Eliminate unnecessary reports and design necessary reports for ease of use;

(6) Provide rapid handling and accurate delivery of mail at minimum cost; and

(7) Organize agency files:

(i) So that needed records can be found rapidly;

(ii) To ensure that records are complete; and

(iii) to facilitate the identification and retention of permanent records and the prompt disposal of temporary records.

Subpart 101–11.2—GSA Governmentwide Programs

§ 101–11.200 Scope of subpart.

This subpart contains policies and procedures prescribed for the following GSA-managed programs:

(a) The Standard and Optional Forms Management Program.

(b) The Interagency Reports Management Program.

§ 101–11.201 General.

(a) The Standard and Optional Forms Management Program was developed and operated by OMB consistent with the authorities prescribed by the Budget and Accounting Act of 1921. GSA assumed responsibility for the program on May 29, 1967, through agreement with OMB.

(b) The Interagency Reports Management Program implements 44 U.S.C. chapters 29 and 31, recognizing OMB functions under 44 U.S.C. 3504(e) and OMB implementation under 5 CFR 1320.16.

§ 101–11.202 Governmentwide programs.

§ 101–11.203 Standard and Optional Forms Management Program.

(a) *General.* (1) The Standard and Optional Forms Management Program was established to achieve Governmentwide economies and efficiencies through the development, maintenance and use of common forms.

(2) GSA will provide additional guidance on the Standard and Optional Forms Management Program.

(b) *Procedures.* Each Federal agency shall—

(1) Designate an agency-level Standard and Optional Forms Liaison Representative and Alternate, and notify GSA in writing of such designees' names, titles, mailing addresses, and telephone numbers within 30 days of the designation or redesignation at the address in paragraph (b)(4) of this section;

(2) Promulgate Governmentwide Standard Forms pursuant to the agency's statutory or regulatory authority and issue in the Federal Register Governmentwide procedures on the mandatory use, revision, or cancellation of these forms;

(3) Sponsor Governmentwide Optional Forms when needed in two or more agencies and announce the Governmentwide availability, revision or cancellation of these forms;

(4) Obtain GSA approval for each new, revised or canceled Standard and Optional Form, 60 days prior to planned implementation, and certify that the forms comply with all applicable laws and regulations. Send approval requests to: General Services Administration, Forms Management Branch (CARM), Washington, DC 20405;

(5) Provide GSA with a camera ready copy of the Standard and Optional Forms the agency promulgates or sponsors prior to implementation, at the address shown in paragraph (b)(4) of this section;

(6) Obtain promulgator's or sponsor's approval for all exceptions to Standard and Optional Forms prior to implementation;

(7) Annually review all Standard and Optional Forms which the agency promulgates or sponsors, including exceptions, for improvement, consolidation, or cancellation;

(8) When requested by GSA and OMB, submit a summary of the Standard and Optional Forms used for collection of information covered by 5 CFR part 1320;

(9) Request approval to overprint Standard and Optional Forms by contacting GSA (CARM); and

(10) Coordinate all matters concerning health care related Standard Forms through the Interagency Committee on Medical Records (ICMR). For additional information on the ICMR, contact GSA (CARM).

§ 101–11.204 Interagency Reports Management Program.

(a) *General.* (1) GSA manages the Interagency Reports Management Program to ensure that interagency reports and recordkeeping requirements are based on need, are cost-effective, and comply with applicable laws and regulations.

(2) GSA will provide additional guidance on the Interagency Reports Management Program.

(b) *Procedures.* (1) Each agency shall:

(i) Obtain GSA approval for each new, revised, or extended interagency report, prior to implementing the report;

(ii) Designate an agency-level interagency reports liaison representative and alternate, and notify GSA in writing of such designees' names, titles, mailing addresses, and telephone numbers within 30 days of the designation or redesignation;

(iii) Use Standard Form 360, Request to Approve an Interagency Reporting Requirement, to obtain GSA approval

for each new, revised, or extended interagency report;

(iv) Attach to each Standard Form 360, a justification statement (signed by the official who requested the report) describing the need for the report;

(v) Explain how the reporting costs shown on Standard Form 360 were derived;

(vi) Make supporting documentation for cost estimates available for GSA review;

(vii) Submit to GSA and OMB (see 5 CFR part 1320) simultaneously for approval, interagency reports that collect information from Federal agencies and from either the public or State or local governments;

(viii) Notify GSA and responding agencies when an interagency report is no longer needed; and

(ix) Send requests for GSA approval and notifications regarding interagency reports to: General Services Administration, Strategic IT Analysis Division,(MKS), 18th and F Streets, NW., Washington, DC 20405.

(2) This section does not apply to the following interagency reports: (However, interagency reports required by Federal agencies to respond to these reports are subject to this section.)

(i) Legislative branch reports.

(ii) Office of Management and Budget (OMB) and other Executive Office of the President reports.

(iii) Judicial branch reports required by court order or decree.

(iv) Reporting requirements for security classified information. However, interagency reporting requirements for non-sensitive or unclassified sensitive information are not exempt, even if such information is later given a security classification by the requesting agency.

Dated: July 31, 1996.

David J. Barram,

Acting Administrator of General Services.

[FR Doc. 96–19960 Filed 8–6–96; 8:45 am]

BILLING CODE 6820–25–P

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41 CFR Part 101–35

[FPMR Interim Rule F–1]

RIN 3090–AG03

Relocation of FIRMR Provisions Relating to the Use of Government Telephone Systems and GSA Services and Assistance

AGENCY: Office of Policy, Planning and Evaluation and the Federal Telecommunications Service, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: This regulation reestablishes the Federal Property Management Regulations (FPMR) certain telecommunications provisions of the Federal Information Resources Management Regulation (FIRMR). These FIRMR provisions will be maintained in the FPMR after August 7, 1996. This change is precipitated by the passage of the Information Technology Management Reform Act of 1996, which effectively disestablishes the FIRMR.

DATES: This rule is effective August 8, 1996.

Comments are solicited and are due: October 7, 1996.

Expiration Date: August 8, 1998.

ADDRESSES: Comments may be mailed to General Services Administration, Office of Policy, Planning and Evaluation, Strategic IT Analysis Division (MKS), 18th & F Streets, NW., Room 3224, Washington, DC 20405 (for Part 101–35.1) or General Services Administration, Federal Telecommunications Service (TCS), 7980 Boeing Court, 4th Floor, Vienna, VA 22182–3988 (for §§101–35.2–101–35.5).

FOR FURTHER INFORMATION CONTACT: Doris Farmer (for Part 101–35.1), GSA, Office of Policy, Planning and Evaluation, Strategic IT Analysis Division (MKS), 18th & F Streets, NW., Room 3224, Washington, DC 20405, telephone FTS/Commercial (202) 501–3194 (v) or (202) 501–0657 (tdd), or Internet (doris.farmer@gsa.gov) and James Cademartori (for Parts 101–35.2 through 101–35.5), GSA, Federal Telecommunications Service, 7980 Boeing Court, 4th Floor, Vienna VA, 22182–3988, telephone FTS/Commercial (703) 760–7545 (v) or (703) 760–7583 (FAX), or Internet (james.cademartori@gsa.gov)

SUPPLEMENTARY INFORMATION: (1) Section 111 of the Federal Property and Administrative Services Act of 1949, as amended (the Brooks Act) (40 U.S.C. 759) was the authority for many of the provisions in the FIRMR. The passage of Public Law 104–106, the Information Technology Management Reform Act of 1996, signed February 10, 1996, repealed Section 111 and the General Services Administration's (GSA) authority to issue Governmentwide regulations for managing, acquiring and disposing of information technology. As a result, the FIRMR will be abolished as of 12:00 midnight on August 8, 1996. The referenced FIRMR provisions that apply to government telecommunications will be maintained in the FPMR after August 7, 1996.

(2) Most of the language now contained in sections 201–20.306, 201–21.600, 201–21.601, 201–21.602, 201–24.101, 201–24.101–1, 201–24.101–2, 201–24.101–3, 201–24.102, 201.24.106, and 201–24.203–1 of the FIRMR is being moved almost verbatim to the FPMR. A few changes were needed to correct out of date references.

(3) GSA has determined that this is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993, because it is not likely to result in any of the impacts noted in Executive Order 12866, affect the rights of specified individuals, or raise issues arising from the policies of the Administration. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of the rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–35

Archives and records, Computer technology, Telecommunications, Government procurement, Property management, Records management, Information technology.

For the reasons set forth in the preamble, 41 CFR chapter 101 is amended by adding subchapter F, consisting of part 101–35, to read as follows:

SUBCHAPTER F—MANAGEMENT AND USE OF TELECOMMUNICATIONS RESOURCES

PART 101–35—TELECOMMUNICATIONS MANAGEMENT POLICY

Subpart 101–35.0—General Provisions

Sec.
101–35.0 Scope of part.
101–35.1–101–35.4 [Reserved]
101–35.5 Definitions.

Subpart 101–35.1—Use of Government Telephone Systems

101–35.100 Scope of subpart.

Subpart 101–35.2—Authorized Use of Long Distance Telephone Services

101–35.200 Scope of subpart.
101–35.201 Authorized use of long distance telephone services.
101–35.202 Collection for unauthorized use.

Subpart 101–35.3—The mandatory FTS Long Distance Network

101–35.300 Scope of subpart.
101–35.301 The mandatory FTS long distance network.
101–35.301–1 General.
101–35.301–2 Policies.
101–35.301–3 Procedures.

Subpart 101–35.4—Consolidated Local Telecommunications service

101–35.400 Scope of subpart.
101–35.401 General.
101–35.402 Policies.

Subpart 101–35.5—National Security and Emergency Preparedness (NSEP)

101–35.500 Scope of subpart.
101–35.501 General.
101–35.502 Policy.
101–35.503 Procedures.

Subpart 101–35.6—Delegation of GSA's Multiyear Contracting Authority for Telecommunications Resources

101–35.600 Scope of subpart.
101–35.601 General.

Authority: 40 U.S.C. 486(c) and 1424(b).

Subpart 101–35.0—General Provisions

§ 101–35.0 Scope of part.

This part prescribes policies and procedures about telecommunications resources.

§§ 101–35.1–101–35.4 [Reserved]

§ 101–35.5 Definitions.

Consolidated local telecommunication service means local telecommunications service to all Federal agencies located in a building, complex, or geographical area.

Executive agency means any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation (see 40 U.S.C. 472(a)).

Federal Telecommunications System (FTS) means the umbrella of local and long distance telecommunications services, including FTS2000 long distance telecommunications services, provided, operated, managed, or maintained by GSA for the common use of all Federal agencies and other authorized users.

Interoperability means the ability of telecommunications resources to provide services to and accept services from other telecommunications resources and to use the services so exchanged to enable them to operate effectively together.

Long distance telephone service means any service or facility purchased with Government funds for completing telephone calls outside of the local service area.

National security and emergency preparedness (NSEP) means those physical, technical, and administrative characteristics of telecommunications systems that will ensure a prescribed level of survivability in times of national or other emergency mission needs of the Government entities that use them.

Subpart 101–35.100—Use of Government Telephone Systems

§ 101–35.100 Scope of subpart.

This subpart discusses the policies and procedures for using long distance telephone service.

Subpart 101–35.2—Authorized Use of Long Distance Telephone Services

§ 101–35.200 Scope of subpart.

This subpart discusses authorized use of telephone systems and facilities provided, paid for, or reimbursed by the Federal Government.

§ 101–35.201 Authorized use of long distance telephone services.

(a) *Scope.* This section describes policies and procedures for the use of Government-provided and commercial long distance telephone service paid for by the Government.

(b) *General.* Agencies should be familiar with the Office of Management and Budget (OMB) ''Guidance on the Privacy Act Implications of Call Detail Programs to Manage Employees' Use of the Government's Telecommunications Systems'' (52 FR 12990, April 20, 1987).

(c) *Policy.* (1) Telephone calls placed over Government-provided and commercial long distance systems that will be paid for or reimbursed by the Government, shall be used to conduct official business only.

(2) To the maximum extent practicable, Federal employees shall place calls on Government-provided long distance telephone systems and services instead of using commercial toll services.

(3) In accordance with 5 CFR 2635.704, the following practices are prohibited and a willful violation may result in criminal, civil, or administrative action, including suspension or dismissal:

(i) Use of any Government system or service, or any other telephone service, where the Government pays the cost of the long distance call, for other than official business, except emergency calls and calls the agency determines are necessary in the interest of the Government.

(ii) Making an unauthorized long distance telephone call with the intent to later reimburse the Government.

(iii) Unauthorized use of telephone call detail data.

(d) *Procedures.* Official business calls may include emergency calls and other calls the agency determines are necessary in the interest of the Government.

(1) Telephone calls may properly be authorized when they—

(i) Do not adversely affect the performance of official duties by the employee or the employee's organization;

(ii) Are of reasonable duration and frequency; and

(iii) Could not reasonably have been made at another time; or

(iv) Are provided for in a collective bargaining agreement that is consistent with this part.

(2) Personal long distance calls that must be made during working hours may be made over the commercial long distance network if consistent with the criteria in paragraph (d)(1) of this section and are:

(i) Charged to the employee's home phone number or other non-Government number (third-number call);

(ii) Made to an 800 toll-free number;

(iii) Charged to the called party if a non-Government number (collect call); or

(iv) Charged to a personal telephone credit card.

(3) Agencies shall issue directives on using telephone facilities and services. Agencies' contractor-operated facilities shall be covered by these directives. The directives may provide further definition of calls necessary in the interest of the Government and shall include procedures for collection and reimbursement for unauthorized calls.

§ 101–35.202 Collection for unauthorized use.

(a) Agencies shall collect for any unauthorized calls if it is cost-effective to do so. Reimbursing the Government for unauthorized calls does not exempt an employee from appropriate administrative, civil, or criminal action.

(b) Agency collections shall include—

(1) The value of the call, computed on the basis of commercial long distance rates rounded to the nearest dollar; and

(2) An additional amount rounded to the nearest dollar to cover the administrative costs of determining that the call was unauthorized and processing the collection.

Subpart 101–35.3—The Mandatory FTS Long Distance Network

§ 101–35.300 Scope of subpart.

This subpart describes the GSA FTS program and contracts that are mandatory-for-use by agencies.

§ 101–35.301 The mandatory FTS long distance network.

§ 101–35.301–1 General.

(a) In accordance with section 629 of Public Law 104–52, (109 Stat. 468, 504, November 19, 1995), executive agencies must use the FTS long distance network.

(b) GSA will grant exceptions to the use of the FTS long distance network when:

(1) The agency's procurement requirements are unique and cannot be satisfied by the FTS long distance network; and

(2) The agency procurement would be cost-effective and would not adversely affect the cost-effectiveness of the FTS long distance network.

(c) The FTS long distance network provides Federal agencies modern up-to-date intercity telecommunications services over the life of the program. GSA will enhance existing services and add features to the FTS long distance network to maintain technologically current services and to improve services to user agencies. GSA will make service improvements in accordance with agencies' needs, contract provisions, governing regulations and statutes.

(d) As used in this FPMR, the terms intercity and long distance have the same meaning.

§ 101–35.301–2 Policies.

(a) Executive agencies shall use the FTS long distance network to satisfy intercity telecommunications requirements within the United States, Guam, Puerto Rico, or the Virgin Islands for requirements which are within the scope of the FTS long distance network voice, data, and video services as such services become available unless:

(1) The agency requests and obtains from GSA an exception to the use of the FTS long distance network based on a GSA determination that:

(i) The agency's procurement requirements are unique and cannot be satisfied by the FTS long distance network; and

(ii) The agency procurement would be cost-effective and would not adversely affect the cost-effectiveness of the FTS long distance network;

(2) The agency requests and obtains from GSA an interim exception to the use of the FTS long distance network based on an established date for transition to the FTS long distance network; or

(3) An exception to the use of the FTS long distance network for the agency is otherwise provided by law.

(b) Unless any of the exceptions listed in paragraph (a) of this section apply to the procurement, and when overall procurement requirements include any agency long distance telecommunications requirements which are within the scope of FTS services, executive agencies shall require offerors in new awards to satisfy those requirements by using the Government furnished services of the FTS long distance network as such services become available.

(c) For ease of determining and evaluating Government costs, executive agencies also shall require offerors to unbundle FTS long distance services in their offers by separately describing and pricing the FTS services that satisfy Government requirements. However, the agency solicitation may prescribe an expected solution for the use of the FTS long distance network. Offerors would then be required to separately price the Government-furnished services of FTS only if their offers show a different use of FTS than the Government's expected solution.

(d) Notwithstanding paragraphs (a) and (b) of this section, agencies may continue to use intercity telecommunications services and facilities provided under contracts previously authorized and awarded without obtaining an exception to the use of the FTS long distance network. However, agencies shall use available FTS long distance services that can satisfy their procurement requirements upon expiration of such contracts. Before exercising renewal options under existing contracts that will result in the provision of intercity telecommunications services, agencies shall obtain an interim exception to the use of the FTS long distance network. This interim exception will allow GSA and the agencies to plan an orderly transition to the FTS long distance network.

(e) In planning for transition to the FTS long distance network, agencies shall be responsible for determining customer premises equipment requirements to achieve efficient interfaces with the type of FTS services needed. However, agencies shall avoid duplicating FTS services. Agencies shall avoid incorporating inherently intercity features (i.e., features that can be provided only as part of an intercity network) of the FTS long distance network in agency networks. An exception to the use of the FTS long distance network is hereby provided to agencies with requirements for non-inherently intercity features to satisfy such features within a local network.

§ 101–35.301–3 Procedures.

(a) GSA will provide assistance in understanding and pricing the services available from the FTS long distance network and in developing plans for transition to the FTS long distance network. For assistance and information concerning the FTS network, agencies should contact the General Services Administration, Federal Telecommunications Service (T), 7980 Boeing Court, 4th Floor, Vienna VA, 22182–3988.

(b) Agencies seeking an exception to the use of the FTS long distance network are responsible for documenting their case. A complete agency request for an exception to the use of the FTS long distance network shall establish to the satisfaction of GSA that:

(1) The agency's procurement requirements are unique and cannot be satisfied by the FTS long distance network;

(2) The agency's procurement would be cost-effective; and

(3) The agency's procurement would not adversely affect the cost-effectiveness of the FTS long distance network. (The rebuttable presumption is that, if an agency procurement requirement is unique and the resultant procurement would be cost-effective, the agency procurement would not adversely affect the cost-effectiveness of the FTS long distance network.)

(c) An agency request for an interim exception to the use of the FTS long distance network shall be based on a GSA established date for transition of agency requirements to the FTS long distance network.

(d) Any agency exception request shall be sent to the General Services Administration/Federal Telecommunications Service (T).

(e) Agencies may conduct procurements for long distance telecommunications services and facilities without prior approval of GSA when the agency's requirements are within the scope of an exception to the use of the FTS long distance network provided by GSA.

(f) An agency may appeal a GSA denial of a request for an exception to the Office of Management and Budget (OMB).

(g) If an agency has a requirement for long distance telecommunications within the United States, Guam, Puerto Rico, or the Virgin Islands that may be outside the scope of FTS, the requirement shall be submitted to GSA/T prior to initiating acquisition action. An exception to the mandatory use of the FTS long distance network will be given if GSA determines the service cannot be provided by the FTS.

Subpart 101–35.4—Consolidated Local Telecommunications Service

§ 101–35.400 Scope of subpart.

This subpart discusses local telecommunications facilities and services provided to executive agencies by GSA and other agencies.

§ 101–35.401 General.

Consolidated local telecommunications service is available in most buildings occupied by concentrations of Federal employees. Local telecommunications includes any access services which provide, for a monthly fee, electronic connectivity to a larger telecommunications network and those support services which provide for the acquisition, operation and management of attached systems. Information on the use of consolidated local telecommunications services may be obtained from: GSA, Federal Telecommunications Service, Office of Regional Services (TR), 1730 M Street, NW., Suite 200, Washington, DC 20036.

§ 101–35.402 Policies.

(a) All executive agencies shall evaluate sharing Government owned or contracted local telecommunications facilities and services. Evaluation criteria and associated decisions must be documented as appropriate.

(b) Executive agencies receiving local telecommunications services from another agency, e.g., a GSA consolidated switch, must acknowledge their shared responsibility to that community of agencies in exchange for those services. Such a community shall be considered a telecommunications ''Shared Resource Community.'' The agency primarily responsible for providing telecommunications service(s) to members of this community shall be the ''Lead Agency.'' Lead agencies must acknowledge their responsibility(s) to provide services until an alternative arrangement has been coordinated with the community. Different agencies may take the lead in providing different services. Memoranda of Agreement will identify responsibilities and cost-recovery mechanisms.

(c) GSA charges to agencies for consolidated local telecommunications service will cover expenses for installation, changes in service, a common distributable charge, and termination.

Subpart 101–35.5—National Security and Emergency Preparedness (NSEP)

§ 101–35.500 Scope of subpart.

This subpart discusses NSEP services and assistance provided by GSA to executive agencies.

§ 101–35.501 General.

Executive Order 12472 (49 FR 13471, 3 CFR, 1984 Comp., p. 193), requires that GSA ensure that the NSEP requirements of agencies are met. GSA incorporates NSEP safeguards and support features in networks and services it provides for agencies. GSA also provides emergency telecommunications for the special needs of agencies and helps agencies plan, obtain, and maintain continuity of telecommunications during wartime and non-wartime emergencies.

§ 101–35.502 Policy.

Agencies shall use available GSA telecommunications systems and services to meet their NSEP requirements.

§ 101–35.503 Procedures.

Before acquiring services or facilities to meet special NSEP requirements, agencies shall review GSA-provided services. Agencies shall coordinate their special NSEP requirements with: General Services Administration, Federal Telecommunications Service, Office of Service Delivery, NSEP Center (TOS), 18th & F Streets, NW, Washington, DC 20405.

Subpart 101–35.6—Delegation of GSA's Multiyear Contracting Authority for Telecommunications Resources

§ 101–35.600 Scope of subpart.

This subpart discusses the delegation of GSA's multiyear contracting authority to executive agencies.

§ 101–35.601 General.

Executive agencies are authorized to enter into multiyear contracts for telecommunications resources subject to the following conditions:

(a) The agency shall notify GSA/T prior to using GSA's multiyear contracting authority.

(b) The contract life including options, shall not exceed 10 years.

(c) Agencies shall comply with OMB budget and accounting procedures relating to appropriated funds.

Dated: July 31, 1996.

David J. Barram,

Acting Administrator of General Services.

[FR Doc. 96–19961 Filed 8–6–96; 8:45 am]

BILLING CODE 6820–25–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 15, 24 and 97

[ET Docket No. 93–62; FCC 96–326]

Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Report and Order* (''R&O'') amends the Commission's Rules to adopt new guidelines and methods for evaluating the environmental effects of radiofrequency (RF) radiation from FCC-regulated transmitters, in accordance with The National Environmental Policy Act (NEPA) of 1969. NEPA requires agencies of the Federal Government to evaluate the effects of their actions on the quality of the human environment. To meet the Commission's responsibilities under NEPA, the Commission has adopted revised RF exposure guidelines for purposes of evaluating potential environmental effects of RF radiation. The new guidelines reflect more recent scientific studies of the biological effects of RF radiation. Use of the new guidelines will ensure that the public and workers receive adequate protection from exposure to potentially harmful RF field.

EFFECTIVE DATE: August 6, 1996.

FOR FURTHER INFORMATION CONTACT: FCC RF Safety Program, (202) 418–2422, Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in ET Docket No. 93–62, FCC 96–326, adopted August 1, 1996 and released August 1, 1996. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Summary of the Report and Order

1. By this action, we are amending the Commission's Rules to adopt new guidelines and methods for evaluating the environmental effects of radiofrequency (RF) radiation from FCC-regulated transmitters. We are adopting Maximum Permissible Exposure (MPE) limits for electric and magnetic field strength and power density for transmitters operating at frequencies from 300 kHz to 100 GHz. Specifically, we are adopting limits for field strength and power density that are generally based on Sections 17.4.1 and 17.4.2 and the time-averaging provisions recommended in Sections 17.4.1.1 and 17.4.3 of ''Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields,'' NCRP Report No. 86 (1986), National Council on Radiation Protection and Measurements (NCRP). With the exception of the limits on exposure to power density above

1500 MHz and the limits for exposure to lower frequency magnetic fields, these MPE limits are also generally based on the guidelines contained in the RF safety standard developed by the Institute of Electrical and Electronic Engineers, Inc. (IEEE) and adopted by the American National Standards Institute (ANSI). *See* Section 4.1 of ANSI/IEEE C95.1–1992, ''Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz''. We are also adopting limits for localized (''partial body'') absorption that will apply to certain portable transmitting devices. These guidelines are based on those recommended by ANSI/IEEE and NCRP. See Sections 4.2.1 and 4.2.2 of ANSI/IEEE C95.1–1992 and Section 17.4.5 of NCRP Report No. 86. We believe that the guidelines we are adopting will protect the public and workers from exposure to potentially harmful RF fields.

2. In reaching our decision on the adoption of new RF exposure guidelines we have carefully considered the large number of comments submitted in this proceeding, and particularly those submitted by the U. S. Environmental Protection Agency (EPA), the Food and Drug Administration (FDA) and other federal health and safety agencies. The new guidelines we are adopting are based primarily on the recommendations of those agencies, and we believe that these guidelines represent a consensus view of the federal agencies responsible for matters relating to the public safety and health.

3. The MPE limits adopted herein are based on exposure criteria quantified in terms of specific absorption rate (SAR), a measure of the rate of RF energy absorption. The basis for these limits, as well as the basis for the 1982 ANSI limits that the Commission previously specified in our rules, is an SAR limit of 4 watts per kilogram. The new MPE limits are derived by incorporating safety factors that lead, in some cases, to limits that are more conservative than the limits specified by ANSI in 1982. The more conservative limits do not arise from a fundamental change in the RF safety criteria for SAR, but from a precautionary desire for more rigor in the derivation of factors which allow limits for MPE to be derived from SAR limits.

4. This action satisfies the requirements of the Telecommunications Act of 1996 for a timely resolution of this proceeding. We note that research and analysis relating to RF safety and health is ongoing, and changes in recommended exposure limits are possible in the future. In that regard, we intend to continue our cooperative work with industry and with the various agencies and organizations with responsibilities in this area in order to ensure that our guidelines continue to be appropriate and scientifically valid.

5. Accordingly, it is ordered that Parts 1, 2, 15, 24 and 97 of the Commission's Rules and Regulations are amended as specified below, effective August 6, 1996. Section 704(b) of the Telecommunications Act of 1996 requires that the Commission complete action in this proceeding, and prescribe and make effective rules regarding the environmental effects of RF emissions, by no later than August 6, 1996 (180 days after enactment)]. We find that good cause exists, pursuant to 5 U.S.C. Sec. 553 (d)(3), to make these rules effective upon their release rather than follow the normal practice of making them effective 30 days after publication in the Federal Register. Congress directed the Commission to make these rules effective within 180 days. Sec. 704 of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996) states that ''[w]ithin 180 days after the enactment of this Act, the Commission shall complete action in ET Docket 93–62 to prescribe and make effective rules regarding the environmental effects of radio frequency emissions.'' Unlike other sections of that Act, *see, e.g.,* Secs. 251(d)(d)(1), which directs us to ''complete'' action, and Sec. 254(a)(2), which directs us to ''promulgate'' rules, Sec. 704 requires that the RF exposure guidelines be made effective within the prescribed 180 day time period. Completion of this rule making has required an extensive amount of work to resolve some extremely complex issues. In addition, coordination with the various federal agencies pursuant to the Interdepartmental Radio Advisory Committee has consumed more time than anticipated. The time required to review the comments, decide on the best possible guidelines based on the scientific evidence and, comments and to coordinate that decision with the other agencies has made it impossible to delay the effective date for 30 days and still meet the Congressionally imposed deadline. Thus, we have no alternative but to make these rules effective immediately. The authority for issuance of this Report and Order is contained in Sections 4(i), 7(a), 303(c), 303(f), 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), and 332(c)(7) , unless otherwise noted.

Final Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice*.[1] The Commission sought written public comments on the proposals in the *Notice*, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. No. 104–121, 110 Stat. 847 (1996).[2]

I. Need for and Purpose of this Action:

The National Environmental Policy Act (NEPA) of 1969 requires agencies of the Federal Government to evaluate the effects of their actions on the quality of the human environment. To meet its responsibilities under NEPA, the Commission has adopted revised RF exposure guidelines for purposes of evaluating potential environmental effects of RF radiation from FCC-regulated facilities. The new guidelines reflect more recent scientific studies of the biological effects of RF radiation. Use of these new guidelines will ensure that the public and workers receive adequate protection from exposure to potentially harmful RF field.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

No comments were filed in direct response to the IRFA. In general comments on the *Notice*, however, some commenters raised issues that might affect small entities. In particular, some commenters argued that the cost of complying with the radio frequency (RF) limits could be overly burdensome, and this could negatively impact small businesses. They express concern that the cost of testing, with respect to devices operating in close proximity to the body, is extremely expensive and obtaining testing equipment could be difficult for small businesses. For example, the National Association of Business and Educational Radio, Inc. (NABER) encourages us to categorically exclude land mobile transmitters, expressing concern that if categorical exclusions for land mobile services are eliminated, manufacturers would have to institute unnecessary and costly

[1] *See Notice of Proposed Rule Making,* ET Docket No. 93–62, 8 FCC Rcd 2849 (1993), 58 FR 19393 (April 14, 1993).

[2] Subtitle II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA), codified at 5 U.S.C. § 601 et seq.

testing.[3] They also request that we limit the amount of paperwork that is necessary for demonstrating compliance with the limits. In particular, the Broadcast Joint Commenters suggest that additional paperwork should not be required to establish compliance with the new policies because it would be needlessly burdensome to the broadcasters and to the Mass Media Bureau.[4] As discussed in Section V of this FRFA, we have attempted to address these concerns.

III. Description and estimate of the Small Entities Subject to the Rules:

The rules in this Report and Order will apply to the following twelve industry categories and services. The RFA generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. § 632. Based on that statutory provision, we will consider a small business concern one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The RFA SBREFA provisions also apply to nonprofit organizations and to governmental organizations. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small business within each of these services or the number of small business that would be affected by this action. We have, however, made estimates based on our knowledge about applications that have been submitted in the past. To the extent that a government entity may be a licensee or an applicant, the impact on those entities is included in the estimates for small businesses below.

As discussed below, under the rules we are adopting many radio services are categorically excluded from having to determine compliance with the new RF radiation limits that are being adopted. This exclusion is based on a determination that there is little potential for these services causing exposures in excess of the limits. Within the services below, many transmitting facilities are also categorically excluded based on antenna location and power. These categorical exclusions significantly reduce the burden associated with these rules, and may reduce the impact of these rules on small businesses.

A. Radiofrequency Devices

The radiofrequency devices affected by this rulemaking are low power, unlicensed transmitters that will be used to provide, on millimeter wave frequencies, a variety of services, including vehicle collision avoidance and high data rate/short range wireless data communications. Unlicensed personal communications service (PCS) transmitters are also radiofrequency devices. Radiofrequency devices are subject to compliance with the new RF radiation requirements at the time of equipment authorization. Therefore, it will be the equipment manufacturers and importers who will be affected by this action.

We expect most of the firms that would be interested in producing millimeter wave and unlicensed PCS devices will be large businesses. We note that Ford Motor and Hewlett Packard have expressed interest in millimeter wave devices and filed comments in this proceeding. In addition, Motorola and Ericsson Corporate, both large equipment manufacturers, have expressed interest in manufacturing unlicensed PCS devices. Nevertheless, it is conceivable that small businesses will also want to manufacture these devices.

The Commission has not developed a definition of small entities applicable to radiofrequency devices. Therefore, the applicable definition of small entity is the definition under the SBA applicable to the ''Communications Services, Not Elsewhere'' category. A small millimeter wave device or unlicensed PCS entity under this definition is one with less than $11.0 million in annual receipts.[5]

The Commission has not yet authorized any millimeter wave devices, and has authorized fewer than ten unlicensed PCS devices. Both these services are new, so we really don't know how many applications for equipment authorization we may receive, nor how many small manufacturers may be interested in producing these products. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses in this category. The Census Bureau estimates indicate that of the 848 firms in the ''Communications Services, Not Elsewhere'' category, 775 are small businesses. Based on this information, as well as our past experience in granting equipment authorization for other types of radiofrequency devices, we estimate that 50 percent of the applications for millimeter wave and unlicensed PCS devices will be from small businesses.

The Commission anticipates that approximately 30 applications will be filed annually for devices that operate in the millimeter band and unlicensed PCS spectrum. All of these applications will require an initial determination of compliance with our new RF guidelines. Of these devices, ten will require specific absorption rate (SAR) modeling or measurement, which adds cost to the authorization process.

B. Cellular Radio Telephone Service

The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.[6] Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small cellular businesses and is unable at this time to make a precise estimate of the number of cellular firms which are small businesses.

The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees.[7] We therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. That census shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[8] Therefore, even if all 12 of these large firms were cellular telephone

[3] NABER Comments at 5–6.

[4] Broadcast Joint Commenters Reply Comments at 39–40.

[5] 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4899.

[6] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

[7] U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

[8] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

companies, all of the remainder were small businesses under the SBA's definition. We assume that, for purposes of our evaluations and conclusions in the Final Regulatory Flexibility Analysis, all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, we do not know the number of cellular licensees, since a cellular licensee may own several licenses.

We assume that all of the current rural cellular licensees are small businesses. Comments filed by small business associations, the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO), state that ⅔ of its 440 members provide cellular service,[9] and comments filed by the Rural Cellular Association (RCA) state that its members serve 80 cellular service areas.[10] We recognize that these numbers represent only part of the current rural cellular licensees because there might be other rural companies not represented by either association.

The rules we are adopting generally require cellular stations to make a determination, through calculation or measurement, as to whether a transmitter facility will comply with the RF radiation exposure limits. If the facility does not comply with the limits, then the applicant (for a new license, a modification, or a renewal of an existing license) must file an Environmental Assessment (EA) pursuant to the National Environment Policy Act. The vast majority of applicants will find their facilities in compliance with the limits, or take steps such as controlling access around the transmitting facility, and will only need to indicate on their application that they comply with the limits. Many cellular transmission facilities are categorically exempted from making a compliance determination based on power and/or antenna height. The Commission processes roughly 700 applications for cellular transmitters facilities, involving 7,000 site locations, per year. Approximately 2,800 transmitting facilities will exceed categorical exclusion criteria and will require a determination of compliance with our new guidelines, based on calculations or measurements.

Manufacturers of mobile and portable cellular transmitters will have to make measurements, or in some cases calculations, as a condition for equipment authorization. Many of these manufacturers are likely to be the same as those that will manufacture unlicensed PCS transmitters, as discussed in the radiofrequency device category above. Based on the information presented for radiofrequency devices, as well as our past experience in granting equipment authorization for other types of radiofrequency devices, we estimate that 50 percent of the applications for cellular telephones will be from small businesses. It is estimated that 200 mobile and portable cellular transmitters will require authorization per year.

C. Personal Communications Service

The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to 47 C.F.R. § 24.720(b), the Commission has defined ''small entity'' for Blocks C and F licensees as firms that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining '''small entity'' in the context of broadband PCS auctions has been approved by the SBA.[11]

The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. We do not have sufficient data to determine how many small businesses under the Commission's definition bid successfully for licenses in Blocks A and B. As of now, there are 90 non-defaulting winning bidders that qualify as small entities in the Block C auction. Based on this information, we conclude that the number of broadband PCS licensees affected by the rule adopted in this *Report and Order* includes the 90 non-defaulting winning bidders that qualify as small entities in the Block C broadband PCS auction.

At present, no licenses have been awarded for Blocks D, E, and F for spectrum. Therefore, there are no small businesses currently providing these services. However, a total of 1,479 licenses will be awarded in the D, E, and F Block broadband PCS auctions, which are scheduled to begin on August 26, 1996. Eligibility for the 493 F Block licensees is limited to ''entrepreneurs'' with the average gross revenues of less than $125 million. However, we cannot estimate how many small businesses under the Commission's definition will win F Block licenses, or D and E Block licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

After all PCS licenses have been issued, the Commission expects to receive approximately 1,000 applications per year involving 10,000 sites. We anticipate that 3000 sites will not meet the categorical exclusion criteria and will involve a determination of compliance with the RF exposure guidelines.

As in the case of cellular telephones, mobile and portable PCS transmitters will have to undergo measurement or modeling to determine compliance with the RF radiation limits as a condition of equipment authorization. Again, we estimate that 50% of the manufacturers will be small businesses. Although we have authorized fewer than ten PCS transmitters, it is estimated that eventually 50 of such devices will be authorized each year.

D. Private Land Mobile Radio Services, Specialized Mobile Radio

Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined ''small entity'' for geographic area 800 MHz and 900 MHz SMR licenses as firms that had average gross revenues of less than $15 million in the three previous calendar years. This regulation defining ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[12]

The rule adopted in this *Report and Order* applies to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable

[9] OPASTCO Comments at 1–2 (filed January 9, 1995).

[10] RCA Comments at 2 (filed January 9, 1995).

[11] See Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 9 FCC Rcd 5532, 5581–84 (1994), 59 FR 37566 (July 22, 1994).

[12] See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89–553, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693–702 (1995), 60 FR 48913 September 21, 1995 Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995), 61 FR 6212, February 16, 1996.

to request information regarding the number of small businesses in this category. We do know that one of these firms has over $15 million in revenues. We assume, for purposes of our evaluations and conclusions in this FRFA, that the remaining existing extended implementation authorizations may be held by small entities, as that term is defined by the SBA.

The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities under the Commission's definition in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this *Report and Order* includes these 60 small entities.

No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

The Commission receives about 3,000 applications for covered SMR transmitters facilities per year. Approximately 1,000 transmitters will exceed categorical exclusion criteria and will require a determination of compliance. In addition, as in the case of cellular telephones and PCS, mobile and portable covered SMR transmitters will have to undergo measurement or modeling to determine compliance with MPE and/or SAR requirements. It is estimated that 200 of such devices will require authorization per year.

E. Satellite Communications Services

The Commission has not developed a definition of small entities applicable to satellite communications licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.

Satellite systems authorized by the Commission can be divided into the following categories: mobile satellite service (MSS) non-geostationary satellite orbit (NGSO) (low or medium orbit satellites); mobile satellite service geostationary; mobile satellite service ship stations; and fixed satellite service.

In the MSS NGSO category the commission has divided its spectrum allocation into small and large NGSO. In the small NGSO or small low Earth-orbit (LEO) satellite service there are three existing and three pending or further licensees, all of which may be considered small business entities in the context of this analysis. These licensees are authorized in the VHF/UHF bands.

In the large LEO MSS category of MSS NGSO there are three existing licensees and three pending or future licensees in the 1.6/2.5 GHz band. The three existing are probably not small business entities and the three pending are probably small business entities. In the category of geostationary MSS the Commission has licensed one consortium, in the 1.5/1.6 GHz band, that comprises many small business entities.

The fixed satellite service (FSS) has generally been authorized in the 4/6 and 11/12 GHz band. There are three FSS licensees, that serve domestic US markets, none of which are small business entities. There are also two licensees serving international markets with FSS authorizations and these entities may be considered small business entities.

It should be noted that in most of the satellite areas discussed above the Commission issues one license to an entity but generally issues blanket license authority for thousands or even hundreds of thousands of earth stations or hand held transceivers. In this analysis we have considered satellite companies that have less than 1500 employees to be small business entities. Therefore, we are concluding that small business entities are largely affected by this proceeding in the satellite area.

The Commission receives about 600 applications for satellite facilities per year. All applicants must make a determination of compliance with the limits, based on calculations or measurements.

F. Radio Broadcast Service

The SBA has defined small radio broadcast service entities based on their ''annual receipts'' specifically in 13 CFR § 104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use to apply the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 CFR. § 121.104(d)(1). The SBA defines affiliation in 13 CFR. § 121.103. While the Commission refers to an affiliate generally as a station affiliated with a network, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 CFR. § 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 CFR. § 121.103(a)(2). Instead of making an independent determination of whether radio and television stations were affiliated based on SBA's definitions, we relied on the data bases available to us to afford us that information.

We have performed a study based on the data contained in the BIA Publications, Inc. Master Access Television Analyzer Database, which lists a total of 1,141 full-power commercial television stations. Low Power Television (LPTV) Stations and translator stations are discussed in paragraph H below. It should be noted that the percentage figures derived from the data base may be underinclusive because the data base does not list revenue estimates for noncommercial educational stations, and these are therefore excluded from our calculations based on the data base. Non-commercial stations are subject to the requirements adopted in the Report and Order. The data indicate that, based on 1995 revenue estimates, 440 full-power commercial television stations had an estimated revenue of 10.5 million dollars or less. That represents 54 percent of commercial television stations with revenue estimates listed in the BIA program. The data base does not

list estimated revenues for 331 stations. Using an extreme scenario, if those 331 stations for which no revenue is listed are counted as small stations, there would be a total of 771 stations with an estimated revenue of 10.5 million dollars or less, representing approximately 68 percent of the 1,141 commercial television stations listed in the BIA data base.

Alternatively, if we look at owners of commercial television stations as listed in the BIA data base, there are a total of 488 owners. The data base lists estimated revenues for 60 percent of these owners, or 295. Of these 295 owners, 156 or 53 percent had annual revenues of less than $10.5 million. Using an extreme scenario, if the 193 owners for which revenue is not listed are assumed to be small, the total of small entities would constitute 72 percent of owners.

In summary, based on the foregoing extreme analysis using census data, we estimate that our rules will apply to as many as 1,150 commercial and non-commercial television stations (78 percent of all stations) that could be classified as small entities. Using the extreme analysis based on the data in the BIA data base, we estimate that as many as approximately 771 commercial television stations (about 68 percent of all commercial televisions stations) could be classified as small entities. As we noted above, these estimates are based on a definition that we believe greatly overstates the number of television broadcasters that are small businesses. Further, it should be noted that under the SBA's definitions, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. The estimates overstate the number of small entities since the revenue figures on which they are based do not include or aggregate such revenues from non-television affiliated companies.

In addition, according to the SBA's regulations, a radio broadcasting station must have annual gross receipts of $5.0 million or less in order to qualify as a small business concern.[13] There are approximately 10,250 commercial radio broadcasting stations and 1,810 noncommercial radio broadcast stations of all sizes in the nation, with approximately 5,200 different commercial licensees. For the same reasons as above, the exact number of small radio broadcasting entities to which the elimination of the rule will apply is unknown. Based on 1996 revenue estimates, the BIA Publications, Inc. Master Access Analyzer Database indicates that 3,314 commercial radio stations had an estimated revenue of $5.0 million or less. That represents approximately 32 percent of commercial radio stations with revenue estimates listed in the BIA program. The data base does not list estimated revenue for 6,571 stations. Using the most extreme scenario, if those 6,571 stations for which no revenue estimates is listed are counted as small stations, there would be a total of 9,885 stations with an estimated revenue of $5.0 or less, representing approximately 96 percent of the 10,257 commercial radio stations listed in the BIA data base.

Alternatively, if we look at owners of commercial radio stations as listed in the BIA data base, there are a total of 5,207 owners. The data base lists estimated revenues for 29 percent of these owners, or 1,532. Of these 1,532 owners, 1,344 or 88 percent had annual revenue of less than $5.0 million. Using the most extreme scenario, if the 3,675 owners for which revenue estimates are not listed are assumed to be small businesses, then the total of small entities would constitute 96 percent of commercial radio station owners. Further, many noncommercial radio broadcasters are considered to be small entities. Thus, a large number of licensees of radio broadcast facilities of several types (commercial AM, commercial FM, and noncommercial FM stations) could benefit from the rule amendment herein adopted.

The Commission receives about 1,800 applications for broadcast facilities per year. All applicants must make a determination of compliance with the limits, either by calculation or measurement.

G. Stations in the Maritime Services

This item would require licensees and applicants for ship satellite earth terminals to make a determination of compliance with the new RF radiation requirements. The Commission has not developed a definition of small entities applicable to ship satellite earth station licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.

Ship MSS is similar to geostationary MSS, as discussed above, except that earth stations are aboard maritime vessels rather than traditional earth stations in the MSS. In the area of ship MSS the Commission has two pending licensees for operation of the satellite service, one of which can be considered small business.

The Commission receives about 272 applications for ship earth stations per year. All applicants must make a determination of compliance with the new RF radiation limits.

H. Experimental, Auxiliary, and Special Broadcast and Other Program Distribution Services

This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). It also includes Instructional Television Fixed Service stations, which are used to relay programming to the home or office, similar to that provided by cable television systems. The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.

There are currently 2,637 FM translators and boosters, 4,910 TV translators, and 1,903 Low Power TV stations which will be affected by the new requirements.[14] There are also 2,032 ITFS licensees. The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities, including Low Power TV stations, could be classified as small businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). As we indicated earlier, 96% of radio stations and 78% of TV stations are designated as small.

The approximate number of annual applications processed by the Commission for this service is 1,032. All of these applications would be required to have a determination made regarding

[13] 13 CFR. § 121.201.

[14] FCC news release, Broadcast Station Totals as of June 30, 1996, released July 10, 1996.

compliance with the new RF radiation limits.

I. Multipoint Distribution Service (MDS)

This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems. The Commission has not developed a definition of small entities applicable to MDS licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. There are 1,800 MDS stations currently licensed and 500 applications for additional channels.

The approximate number of annual applications processed by the Commission for MDS is 900. It is estimated that of the 900 processed, only 113 will not meet the categorical exclusion criteria and have to make a determination of compliance with the RF radiation limits.

J. Paging and Radiotelephone Service, and Private Land Mobile Radio Services, Paging Operations

Since the Commission has not yet approved a definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing less than 1,500 persons.

The Commission anticipates that a total of 15,531 non-nationwide geographic area licenses will be granted or auctioned. The geographic area licenses will consist of 3,050 MTA licenses and 12,481 EA licenses. In addition to the 47 Rand McNally MTAs, the Commission is licensing Alaska as a separate MTA and adding three MTAs for the U.S. territories, for a total of 51 MTAs. No auctions of paging licenses has been held yet, and there is no basis to determine the number of licenses that will be awarded to small entities. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees, and that no reliable estimate of the number of prospective paging licensees can be made, we assume, for purposes of this FRFA, that all the 15,531 geographic area paging licenses will be awarded to small entities, as that term is defined by the Small Business Administration (SBA).

We estimate that the approximately 600 current paging carriers could take the opportunity to partition and or/ disaggregate a license to obtain an additional license through partitioning or disaggregation. We estimate that up to 48,393 licensees or potential licensees could take the opportunity to partition and/or disaggregate a license or obtain a license through partitioning or disaggregation. This number is based on the total estimate of paging carriers (approximately 600) and non-nationwide geographic area licenses to be awarded (15,531) and our estimate that each license will probably not be partitioned and/or disaggrageted to no more than three parties. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees, and that no reliable estimate of the number of future paging licensees can be made, we assume for purposes of this FRFA that all of the licensees will be awarded to small businesses. We believe that it is possible that a significant number of up to approximately 48,393 licensees or potential licensees who could take the opportunity to partition and/or disaggregate a license or who could obtain a license through partitioning and/or disaggregation will be a small business.

The Commission receives about 10,000 applications for paging facilities per year. Approximately 1,176 transmitters will exceed categorical exclusion criteria and will require a determination of compliance with the new guidelines, either by measurement or calculation.

K. Experimental Radio Service

The Commission has not developed a definition of small entities applicable to experimental licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.[15] Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small experimental radio businesses and is unable at this time to make a precise estimate of the number of Experimental Radio Services which are small businesses.

The majority of experimental licenses are issued to companies such as Motorola and Department of Defense contractors such as Northrop, Lockheed and Martin Marietta. Businesses such as these may have as many as 200 licenses at one time. The majority of these applications, 70 percent, are from entities such as these. Given this fact, the remaining 30 percent of applications, we assume, for purposes of our evaluations and conclusions in this FRFA, will be awarded to small entities, as that term is defined by the SBA.

The Commission processes approximately 1,000 applications a year for experimental radio operations. About half or 500 of these are renewals and the other half are for new licenses. Approximately 500 of these applications will be required to make an initial determination of compliance with our new RF guidelines.

IV. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements:

Applicants that are subject to the new RF radiation guidelines (i.e., not categorically excluded), are required to make a statement on any application filed with the Commission indicating that they comply with the RF radiation limits. Technical information supporting that statement must be retained by the applicant, and provided to the Commission upon request. In some cases, the applicant will be able to determine compliance by making calculations or reading applicable literature, including OST Bulletin No. 65. In other cases, detailed measurements of the transmitting facility may be necessary. In addition, steps to control access to the facility, such as warning signs or fences, may be required. Manufacturers of radio transmitting equipment will, as indicated above, need to make MPE and/or SAR measurements that will need to form part of the manufacturer's records for equipment authorization.

Reporting

Reporting requirements are limited to certain classes of applicants and licensees for which the potential for human exposure to RF emissions is the greatest. Most applicants and licensees are categorically excluded from routinely evaluating their facilities, operations or transmitters for compliance with the new RF exposure guidelines. The National Environmental Policy Act (NEPA), upon which our rules are based, allows ''categorical exclusion'' of large classes of actions that generally do not provide an opportunity for causing significant environmental impact, such as would result from human exposure to RF emissions in excess of the guidelines. In this case, the ''actions'' excluded are the granting of Commission applications and authorizations. Therefore, we are categorically excluding many applications submitted to the

[15] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

Commission from routine evaluation for compliance with the RF guidelines. This exclusion significantly limits burden on our regulatees, including many small businesses. The category exclusions apply to all radio services except those listed in section IV above and the radio amateur service. This means, for example, that all land mobile and public safety two-way systems are categorically excluded.

Applicants in services that are not categorically excluded may also be categorically excluded from determining compliance based on antenna location or station power. Applicants who are not categorically excluded are required to make a statement on certain application forms filed with the Commission indicating whether they comply with our environmental rules. This action by a licensee or applicant is the primary reporting requirement. In addition, supporting information (such as measurement data, site drawings, and calculations) may be requested, in certain cases, to justify the statement made on a Commission form.

Recordkeeping

The Commission has no specific recordkeeping requirements related to compliance with the RF exposure guidelines. This has not changed from the rules previously in place regarding compliance with RF exposure guidelines. The Commission does reserve the right to request information supporting the answer an applicant gives on a form. Such information would normally be technical in nature and could involve a report of calculations performed or measurements made to determine compliance. Therefore, many applicants and licensees may keep information related to their compliance on file in some form for their own records. The Commission provides applicants with guidance on performing calculations or measurements through its OST Bulletin No. 65, which is being updated to reflect the new guidelines. In many cases, an applicant or licensee can easily use this bulletin to determine compliance through the use of charts, figures and tables. This largely eliminates the need for keeping a detailed analytic report in many cases. Manufacturers of equipment who are required to evaluate portable or mobile devices would likely have to perform more detailed analysis and keep on file a specific technical report for review by the Commission if requested. Also, in a few cases involving multiple transmitters at large antenna farms detailed measurement studies may be necessary. Reports of such studies would be retained by an applicant to provide evidence of compliance if required.

Other Compliance Requirements

As was true for the previous rules, there are no specific compliance requirements, as such. Under the Commission's NEPA rules, applicants and licensees are required to submit an Environmental Assessment (EA) if they do not comply with our RF exposure guidelines (47 CFR § 1.1311). An EA is a detailed accounting of the consequences created by a specific action that may have a significant environmental impact, in this case a Commission authorization of a transmitter or facility that exceeds the RF guidelines. An EA would be evaluated by the Commission to determine whether the authorization should be granted in view of the environmental impact. In reality, this leads to a *de facto* compliance requirement, since most applicants and licensees who are not categorically excluded (see above) undertake measures to ensure compliance before submitting an application in order to avoid the preparation of a costly and time-consuming EA. For this reason EAs are rarely filed with the Commission. This has not changed from the existing rules. As for determining compliance, as mentioned above, the Commission provides applicants with specific guidance in the form of a technical bulletin. This bulletin is designed to minimize the effort and burden required by an applicant to determine compliance with the guidelines prior to submitting an application. Many options are available for ensuring compliance, including restricting access to an area where high RF levels exist, using warning signs or fences to provide notice of potential RF exposure, use or protective shielding or warning devices, reduction of power when people are in high RF areas and, in the case of portable and mobile devices, designing devices to minimize RF absorption in the body of the user.

Skills Needed to Meet Requirements

If a station is not categorically excluded, then the licensee or applicant must make a determination of whether the station will comply with the RF radiation limits. This study can be done by calculation or measurement, depending upon the situation. The calculations can be done in many cases by a radio technician or engineer familiar with radio propagation. If measurements are necessary, then a radio technician or engineer will also be required.

The applicant must indicate on its application that it meets the NEPA requirements and, therefore, does not exceed the RF radiation limits. This is usually done by checking a box on a form, which can be done by a clerical person.

V. Steps Taken to Minimize the Economic Impact on Small Entities

The Commission has made every effort to devise ways to minimize the impact of the new RF limits on small entities, while protecting the health and safety of the public. However, we have incorporated sufficient flexibility in the procedures to make compliance as minimally burdensome as possible. We have taken the following steps to ease the impact on small businesses.

1. The Commission has created a categorical exclusion that requires only those transmitters that appear to have the highest potential to create a significant environmental effect to perform an environmental evaluation.

2. The Commission will revise OST Bulletin No. 65 to provide guidance for determining compliance with FCC-specified RF limits. This should be of particular assistance to small businesses since it will provide straightforward information that should allow a quick understanding of the requirements and a quick assessment of the potential for compliance problems without the need for an expensive consultant or measurement.

3. The Commission allows various methods for ensuring compliance with RF limits such as fencing, warning signs, labels, and markings, locked doors in roof-top areas, and the use of personal monitors and RF protective clothing in an occupational environment.

4. The Commission has rejected its initial proposal to adopt induced and contact currents limits due to the lack of reliable equipment available.

5. The Commission has specified a variety of acceptable testing methods and procedures that may be used to determine compliance. This will allow each small business to choose a procedure that best meets its needs in the manner that is least burdensome to it.

6. The Commission has always allowed multiple transmitter sites, i.e., antenna farms, to pool their resources and have only one study done for the entire site. This is very common at sites that have multiple entities such as TV, FM, paging, cellular, etc. In most circumstances, rather than each licensee hiring a separate consultant and submitting a study showing their compliance with the guidelines, one

consulting radio technician or radio engineer can be hired by the group of licensees. The consultant surveys the entire site for compliance and gives his recommendations and findings to each of the licensees at the site. The licensees can then use the findings to show their compliance with the guidelines. In this way the cost of compliance is minimized as no one licensee has to pay the entire consulting fee, rather just a portion of it.

The Commission has determined cost of performing an environmental evaluation is minimal for 87 percent of the businesses required to determine compliance. In normal situations, an environmental evaluation can be performed within 1 hour or less with the use of the revised OST Bulletin No. 65, ''Evaluating Compliance With FCC-Specified Guidelines for Human Exposure to Radio Frequency Radiation.'' In situations involving devices intended to be used in close proximity to the body, only PCS, cellular, and SMR portable and mobile devices will be required to evaluate compliance under the Commission's equipment authorization process.

Report to Congress

The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

List of Subjects

47 CFR Part 1

Environmental impact statement, Federal Communications Commission, Radio, Reporting and recordkeeping requirements.

47 CFR Part 2

Federal Communications Commission, Radio, Reporting and recordkeeping requirements.

47 CFR Part 15

Computer technology, Federal Communications Commission, Reporting and recordkeeping requirements.

47 CFR Part 24

Federal Communications Commission, Personal communications service.

47 CFR Part 97

Communications equipment, Federal Communications Commission, Radio.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, parts 1, 2, 15, 24 and 97 are amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303 and 309(j) unless otherwise noted.

2. Section 1.1307 is amended by revising paragraph (b), by removing notes 1, 2 and 3 following paragraph (b), and by adding new paragraph (e) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) In addition to the actions listed in paragraph (a) of this section, Commission actions granting construction permits, licenses to transmit or renewals thereof, equipment authorizations or modifications in existing facilities, require the preparation of an Environmental Assessment (EA) if the particular facility, operation or transmitter would cause human exposure to levels of radiofrequency radiation in excess of the limits in § 1.1310 and § 2.1093 of this chapter. Applications to the Commission for construction permits, licenses to transmit or renewals thereof, equipment authorizations or modifications in existing facilities must contain a statement confirming compliance with the limits unless the facility, operation, or transmitter is categorically excluded, as discussed below. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(1) The exposure limits in § 1.1310 are generally applicable to all facilities, operations and transmitters regulated by the Commission. However, a determination of compliance with the exposure limits in § 1.1310, and preparation of an EA if the limits are exceeded, is necessary only for facilities, operations and transmitters that fall into the categories listed in Table 1, or those specified in paragraph (b)(2) of this section. All other facilities, operations and transmitters are categorically excluded from making such studies or preparing an EA, except as indicated in paragraphs (c) and (d) of this section. For purposes of Table 1, ''rooftop'' means the roof or otherwise outside, topmost level or levels of a building structure that is occupied as a workplace or residence and where either workers or the general public may have access. The term ''power'' in column 2 of Table 1 refers to total operating power of the transmitting operation in question in terms of effective radiated power (ERP), equivalent isotropically radiated power (EIRP), or peak envelope power (PEP), as defined in § 2.1 of this chapter. For the case of the Cellular Radiotelephone Service, subpart H of part 22 of this chapter; the Personal Communications Service, part 24 of this chapter and covered Specialized Mobile Radio Service operations, part 90 of this chapter, the phrase ''total power of all channels'' in column 2 of Table 1 means the sum of the ERP or EIRP of all co-located simultaneously operating transmitters of the facility. When applying the criteria of Table 1, radiation in all directions should be considered. For the case of transmitting facilities using sectorized transmitting antennas, applicants and licensees should apply the criteria to all transmitting channels in a given sector, noting that for a highly directional antenna there is relatively little contribution to ERP or EIRP summation for other directions.

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (Title 47 CFR Rule Part)	Evaluation required if:
Experimental Radio Services (part 5)	Power > 100W ERP (164W EIRP).
Radio Frequency Devices (part 15)	Millimeter wave devices operating in one of the following bands 46.7–46.8 GHz, 59.0–64.0 GHz or 76.0–77.0 GHz (see §§ 15.253 and 15.255 of this chapter).
	Unlicensed personal communications service devices operating under subpart D of this chapter.

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION—Continued

Service (Title 47 CFR Rule Part)	Evaluation required if:
Multipoint Distribution Service (subpart K of part 21)	*Non-rooftop antennas:* height above ground level to radiation center < 10 m *and* power > 1640 W EIRP. *Rooftop antennas:* Power > 1640W EIRP.
Paging and Radiotelephone Service (subpart E of part 22)	*Non-rooftop antennas:* height above ground level to radiation center < 10 m *and* power > 1000W ERP (1640 W EIRP). *Rooftop antennas:* power > 1000W ERP (1640W EIRP).
Cellular Radiotelephone Service (subpart H of part 22)	*Non-rooftop antennas:* height above ground level to radiation center < 10 m *and* total power of all channels > 1000W ERP (1640 W EIRP). *Rooftop antennas:* total power of all channels > 1000W ERP (1640W EIRP).
Personal Communications Services (part 24)	(1) Narrowband PCS (subpart D): *non-rooftop antennas:* height above ground level to radiation center <10 m *and* total power of all channels > 1000W ERP (1640 W EIRP). *Rooftop antennas:* total power of all channels > 1000W (1640W EIRP). (2) Broadband PCS (subpart E): *non-rooftop antennas:* height above ground level to radiation center <10 m *and* total power of all channels > 2000W ERP (3280 W EIRP). *Rooftop antennas:* total power of all channels > 2000W (3280W EIRP).
Satellite Communications (part 25)	All included.
Radio Broadcast Services (part 73)	All included.
Experimental, auxiliary, and special broadcast and other program distributional services (part 74).	Subparts A, G, L: power > 100W ERP. Subpart I: *non-rooftop antennas:* height above ground level to radiation center < 10 m *and* power > 1640 W EIRP. *Rooftop antennas:* power > 1640W EIRP.
Stations in the Maritime Services (part 80)	Ship earth stations only.
Private Land Mobile Radio Services Paging Operations (part 90)	*Non-rooftop antennas:* height above ground level to radiation center < 10 m *and* power > 1000W ERP (1640 W EIRP). *Rooftop antennas:* power > 1000W ERP (1640W EIRP).
Private Land Mobile Radio Services Specialized Mobile Radio (''covered'' providers only—see below)[1] (part 90).	*Non-rooftop antennas:* height above ground level to radiation center < 10 m *and* total power of all channels > 1000W ERP (1640 W EIRP). *Rooftop antennas:* total power of all channels > 1000W ERP (1640W EIRP).
Amateur Radio Service (part 97)	Transmitter power > 50W PEP.

[1] Note: ''Covered'' SMR providers includes geographic area SMR licensees in the 800 MHz and 900 MHz bands that offer real-time, two-way switched voice service that is interconnected with the public switched network and Incumbent Wide Area SMR licensees, as defined in § 20.3 of this chapter.

(2) Mobile and portable transmitting devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services (PCS), the Satellite Communications Services, the Maritime Services (ship earth stations only) and covered Specialized Mobile Radio Service providers authorized under subpart H of part 22, part 24, part 25, part 80, and part 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 2.1091 and 2.1093 of this chapter. All unlicensed PCS and millimeter wave devices are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in § 15.253(f), § 15.255(g), and § 15.319(i) of this chapter. All other mobile, portable, and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure under §§ 2.1091 and 2.1093 of this chapter except as specified in paragraphs (c) and (d) of this section.

(3) In general, when the guidelines specified in § 1.1310 are exceeded in an accessible area due to the emissions from multiple fixed transmitters, actions necessary to bring the area into compliance with the guidelines are the shared responsibility of all licensees whose transmitters produce field strengths or power density levels at the area in question in excess of 1% of the exposure limits applicable to their particular transmitter.

(i) Applicants for proposed (not otherwise excluded) transmitters, facilities or modifications that would cause non-compliance with the limits specified in § 1.1310 at an accessible area previously in compliance must submit an EA if emissions from the applicant's transmitter or facility would result in a field strength or power density at the area in question that exceeds 1% of the exposure limit applicable to that transmitter or facility.

(ii) Renewal applicants whose (not otherwise excluded) transmitters or facilities contribute to the field strength or power density at an accessible area not in compliance with the limits specified in § 1.1310 must submit an EA if emissions from the applicant's transmitter or facility results in a field strength or power density at the area in question that exceeds 1% of the exposure limit applicable to that transmitter or facility.

(4) *Transition Provisions.* For applications filed with the Commission prior to January 1, 1997, Commission actions granting construction permits, licenses to transmit or renewals thereof, equipment authorizations, or modifications in existing facilities require the preparation of an Environmental Assessment if the particular facility, operation or transmitter would cause human exposure to levels of radiofrequency radiation that are in excess of the requirements contained in paragraphs (b)(4) (i) through (iii) of this section. These transition provisions do not apply to applications for equipment authorization of mobile, portable, and unlicensed devices specified in paragraph (b) (2) of this section.

(i) For facilities and operations licensed or authorized under parts 5, 21 (subpart K), 25, 73, 74 (subparts A, G, I, and L), and 80 of this chapter, the ''Radio Frequency Protection Guides'' recommended in ''American National Standard Safety Levels with Respect to

Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz'', (ANSI C95.1–1982), issued by the American National Standards Institute (ANSI) and copyright 1982 by the Institute of Electrical and Electronics Engineers, Inc., New York, New York shall apply. With respect to subpart K of part 21 and subpart I of Part 74 of this chapter, these requirements apply only to multipoint distribution service and instructional television fixed service stations transmitting with an equivalent isotropically radiated power (EIRP) in excess of 200 watts. With respect to subpart L of part 74 of this chapter, these requirements apply only to FM booster and translator stations transmitting with an effective radiated power (ERP) in excess of 100 watts. With respect to part 80 of this chapter, these requirements apply only to ship earth stations.

(ii) For facilities and operations licensed or authorized under part 24 of this chapter, licensees and manufacturers are required to ensure that their facilities and equipment comply with IEEE C95.1–1991 (ANSI/IEEE C95.1–1992), ''Safety Levels With Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz.'' Measurement methods are specified in IEEE C95.3–1991, ''Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields—RF and Microwave.'' Copies of these standards are available from IEEE Standards Board, 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331. Telephone: 1–800–678–4333. The limits for both ''controlled'' and ''uncontrolled'' environments, as defined by IEEE C95.1–1991, will apply to all PCS base and mobile stations, as appropriate.

(iii) Applications for all other types of facilities and operations are categorically excluded from routine RF radiation evaluation except as provided in paragraphs (c) and (d) of this section.

* * * * *

(e) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the regulations contained in this chapter concerning the environmental effects of such emissions. For purposes of this paragraph:

(1) The term ''personal wireless service'' means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(2) The term ''personal wireless service facilities'' means facilities for the provision of personal wireless services;

(3) The term ''unlicensed wireless services'' means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services; and

(4) The term ''direct-to-home satellite services'' means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

3. A new Section 1.1310 is added to read as follows:

§ 1.1310 Radiofrequency radiation exposure limits.

The criteria listed in Table 1 shall be used to evaluate the environmental impact of human exposure to radiofrequency (RF) radiation as specified in § 1.1307(b), except in the case of portable devices which shall be evaluated according to the provisions of § 2.1093 of this chapter. Further information on evaluating compliance with these limits can be found in the FCC's OST/OET Bulletin Number 65, ''Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation.''

Note to Introductory Paragraph: These limits are generally based on recommended exposure guidelines published by the National Council on Radiation Protection and Measurements (NCRP) in ''Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields,'' NCRP Report No. 86, Sections 17.4.1, 17.4.1.1, 17.4.2 and 17.4.3. Copyright NCRP, 1986, Bethesda, Maryland 20814. In the frequency range from 100 MHz to 1500 MHz, exposure limits for field strength and power density are also generally based on guidelines recommended by the American National Standards Institute (ANSI) in Section 4.1 of ''IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz,'' ANSI/IEEE C95.1–1992, Copyright 1992 by the Institute of Electrical and Electronics Engineers, Inc., New York, New York 10017.

TABLE 1.— LIMITS FOR MAXIMUM PERMISSIBLE EXPOSURE (MPE)

Frequency range (MHz)	Electric field strength (V/m)	Magnetic field strength (A/m)	Power density (mW/cm^2)	Averaging time (minutes)
(A) Limits for Occupational/Controlled Exposures				
0.3–3.0	614	1.63	*(100)	6
3.0–30	1842/f	4.89/f	*(900/f^2)	6
30–300	61.4	0.163	1.0	6
300–1500	.....	.....	f/300	6
1500–100,000	.....	.....	5	6
(B) Limits for General Population/Uncontrolled Exposure				
0.3–1.34	614	1.63	*(100)	30
1.34–30	824/f	2.19/f	*(180/f^2)	30
30–300	27.5	0.073	0.2	30
300–1500	.....	.....	f/1500	30
1500–100,000	.....	.....	1.0	30

f = frequency in MHz
* = Plane-wave equivalent power density

Note 1 to Table 1: Occupational/controlled limits apply in situations in which persons are exposed as a consequence of their employment provided those persons are fully aware of the potential for exposure and can exercise control over their exposure. Limits for occupational/controlled exposure also apply in situations when an individual is transient through a location where

occupational/controlled limits apply provided he or she is made aware of the potential for exposure.

Note 2 to Table 1: General population/uncontrolled exposures apply in situations in which the general public may be exposed, or in which persons that are exposed as a consequence of their employment may not be fully aware of the potential for exposure or can not exercise control over their exposure.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: Sec. 4, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303 and 307, unless otherwise noted.

2. A new center heading and § 2.1091 are added to subpart J to read as follows: Radiofrequency Radiation Exposure

§ 2.1091 Radiofrequency radiation exposure evaluation: mobile and unlicensed devices.

(a) Requirements of this section are a consequence of Commission responsibilities under the National Environmental Policy Act to evaluate the environmental significance of its actions. See subpart I of part 1 of this chapter, in particular § 1.1307(b).

(b) For purposes of this section mobile devices are defined as transmitters designed to be used in other than fixed locations and to generally be used in such a way that a separation distance of at least 20 centimeters is normally maintained between radiating antennas and the body of the user or nearby persons.

(c) Mobile devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services, the Satellite Communications Services, the Maritime Services and the Specialized Mobile Radio Service authorized under subpart H of part 22, part 24, part 25, part 80 of this chapter (ship earth station devices only) and part 90 of this chapter (''covered'' SMR devices only, as defined in the note to Table 1 of § 1.1307(b)(1) of this chapter), are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if their effective radiated power (ERP) is 1.5 watts or more. Unlicensed personal communications service and unlicensed millimeter wave devices authorized under § 15.253, § 15.255 and subpart D of part 15 of this chapter are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, regardless of their power used, unless they meet the definition of a portable device as specified in § 2.1093(b). All other mobile and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure prior to equipment authorization, except as specified in §§ 1.1307(c) and 1.1307(d) of this chapter. Applications for equipment authorization of mobile and unlicensed transmitting devices subject to routine environmental evaluation must contain a statement confirming compliance with the limits specified in paragraph (d) of this section as part of their application. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(d) The limits to be used for evaluation are specified in § 1.1310 of this chapter. All unlicensed personal communications service (PCS) devices shall be subject to the limits for general population/uncontrolled exposure.

(1) For purposes of analyzing mobile transmitting devices under the occupational/controlled criteria specified in § 1.1310 of this chapter, time-averaging provisions of the guidelines may be used in conjunction with typical maximum duty factors to determine maximum likely exposure levels.

(2) Time-averaging provisions may not be used in determining typical exposure levels for devices intended for use by consumers in general population/uncontrolled environments as defined in § 1.1310 of this chapter. However, ''source-based'' time-averaging based on an inherent property or duty-cycle of a device is allowed. An example of this is the determination of exposure from a device that uses digital technology such as a time-division multiple-access (TDMA) scheme for transmission of a signal. In general, maximum average power levels must be used to determine compliance.

(3) Compliance with exposure guidelines for mobile and unlicensed devices can be accomplished by the use of warning labels and by providing users with information concerning minimum separation distances from transmitting structures and proper installation of antennas.

4. A new section 2.1093 is added to subpart J to read as follows:

§ 2.1093 Radiofrequency radiation exposure evaluation: portable devices.

(a) Requirements of this section are a consequence of Commission responsibilities under the National Environmental Policy Act to evaluate the environmental significance of its actions. See subpart I of Part 1 of this chapter, in particular § 1.1307(b).

(b) For purposes of this section portable devices are defined as transmitters designed to be used within 20 centimeters of the body of the user.

(c) Portable devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services, the Satellite Communications services, the Maritime Services and the Specialized Mobile Radio Service authorized under subpart H of part 22 of this chapter, part 24 of this chapter, part 25 of this chapter, part 80 of this chapter (ship earth station devices only), part 90 of this chapter (''covered'' SMR devices only, as defined in the note to Table 1 of § 1.1307(b)(1) of this chapter), and portable unlicensed personal communication service and millimeter wave devices authorized under § 15.253, § 15.255 or subpart D of part 15 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use. All other portable transmitting devices are categorically excluded from routine environmental evaluation for RF exposure prior to equipment authorization, except as specified in §§ 1.1307(c) and 1.1307(d) of this chapter. Applications for equipment authorization of portable transmitting devices subject to routine environmental evaluation must contain a statement confirming compliance with the limits specified in paragraph (d) of this section as part of their application. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(d) The limits to be used for evaluation are based generally on criteria published by the American National Standards Institute (ANSI) for localized specific absorption rate (''SAR'') in Section 4.2 of ''IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz,'' ANSI/IEEE C95.1–1992, Copyright 1992 by the Institute of Electrical and Electronics Engineers, Inc., New York, New York 10017. These criteria for SAR evaluation are similar to those recommended by the National Council on Radiation Protection and Measurements (NCRP) in ''Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields,'' NCRP Report No. 86, Section 17.4.5. Copyright NCRP, 1986, Bethesda, Maryland 20814. SAR is a measure of the rate of energy absorption due to exposure to an RF transmitting source. SAR values have been related to threshold levels for potential biological hazards. The criteria to be used are

specified in paragraphs (d)(1) and (d)(2) of this section.

(1) Limits for Occupational/Controlled exposure: 0.4 W/kg as averaged over the whole-body and spatial peak SAR not exceeding 8 W/kg as averaged over any 1 gram of tissue (defined as a tissue volume in the shape of a cube). Exceptions are the hands, wrists, feet and ankles where the spatial peak SAR shall not exceed 20 W/kg, as averaged over an 10 grams of tissue (defined as a tissue volume in the shape of a cube). Occupational/Controlled limits apply when persons are exposed as a consequence of their employment provided these persons are fully aware of and exercise control over their exposure. Awareness of exposure can be accomplished by use of warning labels or by specific training or education through appropriate means, such as an RF safety program in a work environment.

(2) Limits for General Population/Uncontrolled exposure: 0.08 W/kg as averaged over the whole-body and spatial peak SAR not exceeding 1.6 W/kg as averaged over any 1 gram of tissue (defined as a tissue volume in the shape of a cube). Exceptions are the hands, wrists, feet and ankles where the spatial peak SAR shall not exceed 4 W/kg, as averaged over any 10 grams of tissue (defined as a tissue volume in the shape of a cube). General Population/Uncontrolled limits apply when the general public may be exposed, or when persons that are exposed as a consequence of their employment may not be fully aware of the potential for exposure or do not exercise control over their exposure. Warning labels placed on consumer devices such as cellular telephones will not be sufficient reason to allow these devices to be evaluated subject to limits for occupational/controlled exposure in paragraph (d)(1) of this section.

(3) Compliance with SAR limits can be demonstrated by either laboratory measurement techniques or by computational modeling. Methodologies and references for SAR evaluation are described in numerous technical publications including ''IEEE Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields—RF and Microwave,'' IEEE C95.3–1991.

(4) For purposes of analyzing portable transmitting devices under the occupational/controlled criteria, the time-averaging provisions of the MPE guidelines identified in § 1.1310 of this chapter can be used in conjunction with typical maximum duty factors to determine maximum likely exposure levels.

(5) Time-averaging provisions of the MPE guidelines identified in § 1.1310 of this chapter may not be used in determining typical exposure levels for portable devices intended for use by consumers, such as hand-held cellular telephones, that are considered to operate in general population/uncontrolled environments as defined above. However, ''source-based'' time-averaging based on an inherent property or duty-cycle of a device is allowed. An example of this would be the determination of exposure from a device that uses digital technology such as a time-division multiple-access (TDMA) scheme for transmission of a signal. In general, maximum average power levels must be used to determine compliance.

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: Secs. 4, 302, 303, 304, 307 and 624A of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 307 and 544A.

2. Section 15.253 is amended by revising paragraph (f) to read as follows:

§ 15.253 Operation within the bands 46.7–46.9 GHz and 76.0–77.0 GHz.

* * * * *

(f) Regardless of the power density levels permitted under this section, devices operating under the provisions of this section are subject to the radiofrequency radiation exposure requirements specified in § 1.1307(b), § 2.1091 and § 2.1093 of this chapter, as appropriate. Applications for equipment authorization of devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

3. Section 15.255 is amended by revising paragraph (g) to read as follows:

§ 15.255 Operation within the band 59.0–64.0 GHz.

* * * * *

(g) Regardless of the power density levels permitted under this section, devices operating under the provisions of this section are subject to the radiofrequency radiation exposure requirements specified in § 1.1307(b), § 2.1091 and § 2.1093 of this chapter, as appropriate. Applications for equipment authorization of devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

4. Section 15.319 is amended by revising paragraph (i), to read as follows:

§ 15.319 General technical requirements.

* * * * *

(i) Unlicensed PCS devices are subject to the radiofrequency radiation exposure requirements specified in § 1.1307(b), § 2.1091 and § 2.1093 of this chapter, as appropriate. All equipment shall be considered to operate in a ''general population/uncontrolled'' environment. Applications for equipment authorization of devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309, and 332, unless otherwise noted.

2. Section 24.52 is revised to read as follows:

§ 24.52 RF hazards.

Licensees and manufacturers are subject to the radiofrequency radiation exposure requirements specified in § 1.1307(b), § 2.1091 and § 2.1093 of this chapter, as appropriate. Applications for equipment authorization of mobile or portable devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

PART 97—AMATEUR RADIO SERVICE

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

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

2. Section 97.13 is amended by adding paragraph (c) to read as follows:

§ 97.13 Restrictions on station location.

* * * * *

(c) Before causing or allowing an amateur station to transmit from any place where the operation of the station could cause human exposure to levels of radiofrequency (RF) radiation in excess of that allowed under § 1.1310 of this chapter, the licensee is required to take certain actions. A routine RF radiation evaluation, as discussed in § 1.1307(b) of this chapter, is required if the transmitter power exceeds 50 watts peak envelope power; otherwise the operation is categorically excluded from routine RF radiation evaluation except as specified in § 1.1307(c) and § 1.1307(d) of this chapter. Where the routine evaluation indicates that the RF radiation could be in excess of the limits contained in § 1.1310 of this chapter, the licensee must take action to prevent such an occurrence. Further information on evaluating compliance with these limits can be found in the FCC's OST/OET Bulletin Number 65, ''Evaluation Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation.''

3. Section 97.503 is amended by revising paragraphs (b)(1), (b)(2), and (b)(3), and adding entry 10 to the table in paragraph (c) to read as follows:

§ 97.503 Element standards.

* * * * *

(b) * * *

(1) Element 2: 35 questions concerning the privileges of a Novice Class operator license. The minimum passing score is 26 questions answered correctly.

(2) Element 3(A): 30 questions concerning the privileges of a Technician Class operator license. The minimum passing score is 22 questions answered correctly.

(3) Element 3(B): 30 questions concerning the privileges of a General Class operator license. The minimum passing score is 22 questions answered correctly.

* * * * *

(c) * * *

Topics	2	3(A)	3(B)	4(A)	4(B)
* * * * * * *					
(10) Radiofrequency environmental safety practices at an amateur station	5	5	5	0	0

[FR Doc. 96–20082 Filed 8–5–96; 2:01 pm]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–87; RM–8782]

Radio Broadcasting Services; Macomb, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WMS1, Inc., allots Channel 240A at Macomb, Illinois, as the community's third local commercial FM transmission service *See* 61 FR 18540, April 26, 1996. Channel 240A can be allotted to Macomb in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.5 kilometers (0.3 miles) south to avoid a short-spacing to the licensed site of Station WMXG(FM), Channel 241C1, Clinton, Iowa. The coordinates for Channel 240A at Macomb are North Latitude 40–27–09 and West Longitude 90–40–12. With this action, this proceeding is terminated.

DATES: Effective September 16, 1996. The window period for filing applications will open on September 16, 1996, and close on October 17, 1996.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 96–87, adopted July 26, 1996, and released August 2, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Channel 240A at Macomb.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–20080 Filed 8–6–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket PS–124; Amdt. 192–78]

RIN 2137–AC25

Regulatory Review; Gas Pipeline Safety Standards; Correction

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule (Docket PS–124) changing miscellaneous gas pipeline safety regulations that was published Thursday, June 6, 1996 (61 FR 28770) in the Federal Register.

EFFECTIVE DATE: August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Albert C. Garnett, at (202) 366–2036, regarding this correction or the Dockets Unit, at (202) 366–5046, regarding copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

The final rule that includes the subject correction changed miscellaneous gas pipeline safety regulations to provide clarity, eliminate unnecessary or overly burdensome requirements, and foster economic growth. As set out in the final rule under the heading Executive Order 12866 and DOT Regulatory Policies and

Procedures, the miscellaneous changes resulted in an annual savings, without associated costs or adverse effects on safety.

Need for Correction

The final rule in amendatory instruction 36. mistakenly did not include the former C.6. as the new D.8. The effect of this inadvertency is the omission of the ''ASME Boiler and Pressure Vessel Code, Section IX * * *.''

Correction of Publication

Accordingly, the publication on June 6, 1996, of the final rule (Docket PS–124), which was the subject of FR Doc. 96–13787, is corrected as follows:

Appendix A to Part 192—[Corrected]

On page 28786, in the second column, lines 12 and 13, of the amendatory instruction 36. are corrected to read ''through D.6. as subsections D.5. through D.8., respectively, and by adding new''.

Issued in Washington, DC, August 1, 1996.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 96–20017 Filed 8–6–96; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Endangered Status for the Hawaiian Plant Pritchardia aylmer-robinsonii (wahane)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant *Pritchardia aylmer-robinsonii* (wahane). The species is endemic to the island of Niihau, Hawaiian Islands. The species and its habitat have been affected and are currently threatened by cattle, pigs, and sheep. Due to the small number of existing individuals and their very narrow distribution, this species is subject to reduced reproductive vigor and/or an increased likelihood of extinction from naturally occurring events. This final rule implements the Federal protection provisions provided by the Act.

EFFECTIVE DATE: This rule takes effect on September 6, 1996.

ADDRESSES: The complete file for this final rule is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Ecoregion, 300 Ala Moana Boulevard, Room 3108, P.O. Box 50088, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Pacific Islands Ecoregion Manager, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

In 1947, on one of his botanical collecting trips to Niihau, Harold St. John discovered a new species of the only genus of palms native to the Hawaiian Islands. He named it *Pritchardia aylmer-robinsonii* in honor of Aylmer F. Robinson, a member of the family that owns the island and a person who provided St. John with much information regarding the island's plants (St. John 1959).

Historically, *Pritchardia aylmer-robinsonii* was found at three sites in the eastern and central portions of the island of Niihau. Trees were found on Kaali Cliff and in Mokouia and Haao Valleys at elevations between 70 and 270 meters (m) (230 and 890 feet (ft)) (Hawaii Heritage Program (HHP) 1991a to 1991d). The most recent observations indicate two plants still remain on Kaali Cliff (Read and Hodel 1990). Originally a component of the Coastal Dry Forest, this species now occurs only in a rugged and steep area where it receives some protection from grazing animals. The substrate in the seepage area is rocky talus. *Prosopis pallida* (kiawe), an introduced tree, is one of the palm's few associated plant taxa. Other native plants that have been found in the area include *Brighamia insignis* ('olulu), *Cyperus trachysanthos* (pu'uka'a), *Lipochaeta lobata* var. *lobata* (nehe), and *Lobelia niihauensis* (HHP 1991e; St. John 1959; Keith Woolliams, Waimea Arboretum and Botanical Garden, pers. comm. 1980). *Pritchardia aylmer-robinsonii* of the palm family (Arecaceae) is a fan-leaved tree about 7 to 15 m (23 to 50 ft) tall with a trunk approximately 20 to 30 centimeters (cm) (8 to 12 inches (in.)) in diameter. The upper and lower leaf surfaces are green and hairless, and leaf segments are rather thin and drooping. The lower surfaces of the petiole and the leaf ribs are covered with dense, tan wool. The branched, hairless flower clusters are located among the leaves and are no longer than the petioles. Each flower is comprised of a cup-shaped, three-lobed calyx; three petals; six stamens; and a three-lobed stigma. The spherical, hard, black fruit is 1.8 to 2 cm (0.7 to 0.8 in.) in diameter. This species is distinguished from others of the genus by the thin leaf texture and drooping leaf segments; the tan woolly hairs on the underside of the petiole and the leaf blade base; the stout hairless flower clusters that do not extend beyond the fan-shaped leaves; and the smaller spherical fruit (Read and Hodel 1990).

Hawaiian land practices prior to European contact probably destroyed most of the forest on Niihau. Grazing animals were introduced to the island beginning in the 1700s. Cattle (*Bos taurus*), goats (*Capra hircus*), sheep (*Ovis aries*), and pigs (*Sus scrofa*) have decreased available habitat for *Pritchardia aylmer-robinsonii* as well as directly damaging trees, seedlings, and/or seeds. The entire island is now classified an Agricultural District, and it is managed as a cattle and sheep ranch. Although approximately 200 immature individuals have been cultivated on Niihau and Kauai, extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of reproductive plants are major threats. Because palms take many years to mature, it is not known whether the immature plants now in cultivation are capable of reproducing and sustaining a viable population.

Roof rats (*Rattus rattus*) are a potential threat to this species since they eat the seeds of some palms of this genus and are found on Niihau (Beccari and Rock 1921; Cuddihy and Stone 1990; Department of Geography 1983; St. John 1959; Tomich 1986; Wagner *et al.* 1985; John Fay, U.S. Fish and Wildlife Service, pers. comm. 1992).

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Pritchardia aylmer-robinsonii* was considered to be endangered. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named

therein. As a result of that review, the Service published a proposed rule on June 16, 1976, in the Federal Register (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant taxa, including *Pritchardia aylmer-robinsonii.* The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, Federal Register publication. General comments received in response to the 1976 proposal are summarized in an April 26, 1978, Federal Register publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the Federal Register (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these notices, *Pritchardia aylmer-robinsonii* was treated as a candidate for Federal listing.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on petitions that present substantial information indicating that the petitioned action may be warranted within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of *Pritchardia aylmer-robinsonii* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the Service to consider the petition as having been resubmitted, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the proposed rule constituted the final 1-year finding for this species.

On December 17, 1992, the Service published a proposal in the Federal Register (57 FR 59970) to list the plant *Pritchardia aylmer-robinsonii* as endangered. This proposal was based primarily on information supplied by the Hawaii Heritage Program and observations by botanists and naturalists. The Service determines *Pritchardia aylmer-robinsonii* to be endangered with the publication of this rule.

The processing of this final listing rule conforms with the Service's final listing priority guidance published in the Federal Register on May 16, 1996 (61 FR 24722). The guidance clarifies the order in which the Service will process rulemakings following two related events: 1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and 2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This final rule falls under Tier 2. At this time there are no pending Tier 1 actions.

Summary of Comments and Recommendations

In the December 17, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The public comment period ended February 16, 1993. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in Kauai's ''The Garden Island'' on December 28, 1992. Two letters of comment, including one from an organization and one from an individual, were received and are discussed below.

One respondent supported the listing of *Pritchardia aylmer-robinsonii* and one opposed the listing. One issue was raised in the opposing respondent's letter. This issue and the Service's response is discussed below.

Issue: Listing of this species will give Federal and State governments authority to interfere with private landowners and to seize private lands.

Response: Section 9 of the Act contains the prohibitions and, in general, prohibits the sale of an endangered plant species in interstate or foreign commerce, or importing or exporting such a plant species. With regard to prohibitions applicable to private lands, section 9 prohibits individuals on private lands from removing or damaging an endangered plant species in knowing violation of State law. Section 10 of the Act outlines some exceptions to these prohibitions. In addition, while the Act authorizes land acquisition from a willing seller as a tool to help protect and recover a listed species in some cases, it does not provide for ''seizure'' of private lands. If additional measures are needed to protect the species, such as propagation of the species on Federal land, the Service will work cooperatively with the landowner. Federally listed species are also accorded listed status under Hawaii State law. In general, Hawaii law prohibits the taking of listed species within that State and encourages conservation measures by State agencies. For more information on applicable provisions of State law, contact the Hawaii Department of Land and Natural Resources.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Pritchardia aylmer-robinsonii* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Pritchardia aylmer-robinsonii* St. John (wahane) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitat of *Pritchardia aylmer-robinsonii* has undergone extreme alteration because of past and present land management practices, including agricultural use and introductions of alien animals. The Hawaiians made extensive agricultural use of Niihau before European contact. Modification of habitat by introduced animals, currently cattle, pigs, and sheep and formerly goats, is one of the major threats facing *Pritchardia aylmer-robinsonii.*

Cattle (*Bos taurus*) were introduced to the Hawaiian Islands in 1793. Feral cattle formerly occurred on Niihau and caused much damage on the island. Goats (*Capra hircus*) were successfully introduced to the Hawaiian Islands in 1792. All feral goats were removed from Niihau in about 1910, but they had already caused considerable damage to the dry and mesic forests. Sheep (*Ovis*

aries) were also introduced to Niihau, where they have and continue to damage the native vegetation and substrate. Pigs (*Sus scrofa*) were introduced to the Hawaiian Islands by the Polynesian immigrants and later from European ships. Pigs presently on Niihau cause damage to the substrate and plants and eat the seeds of *Pritchardia aylmer-robinsonii* (Cuddihy and Stone 1990; Stone 1985; Tomich 1986; Wagner et al. 1985; J. Fay, pers. comm. 1992).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Because the natural population is on a privately owned island with limited public access, activities such as unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants are unlikely to occur.

C. *Disease or predation.* Niihau is used as a cattle and sheep ranch with animals ranging in many areas of the island. Predation is a probable threat since *Pritchardia aylmer-robinsonii* is not known to be unpalatable to these ungulates. St. John noted damage to one tree believed to have been caused by an animal (1959). The current occurrence of plants only in a rocky area inaccessible to ungulates indicates the effect that browsing mammals have had in restricting the distribution of the species.

Roof and black rats (*Rattus rattus*), which occur on Niihau, have been reported to damage the fruit of other species of Pritchardia and, thus, pose a potential threat to *Pritchardia aylmer-robinsonii* (Beccari and Rock 1921).

D. *The inadequacy of existing regulatory mechanisms.* The known natural habitat of this species is located exclusively on privately owned land. There is currently no existing regulatory mechanism or other authority to prevent further decline of this species on private land. Hawaii's Endangered Species Act states, ''Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter* * *'' (HRS, sect. 195D–4(a)). Federal listing automatically triggers listing under Hawaii State law, which prohibits taking of endangered plants in the State and encourages conservation by State agencies (HRS, sect. 195D–4).

State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D–5(a)). The State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D–5(c)). Funds for these activities can be made available under section 6 of the Federal Act (State Cooperative Agreements). The Hawaii Department of Land and Natural Resources is mandated to initiate changes in conservation district boundaries to include ''the habitat of rare native species of flora and fauna within the conservation district'' (HRS, sect. 195D–205–4). Currently, the entire island of Niihau is within the Agricultural District. Listing of this species will activate the protection available under the State Act and other laws. The Federal Act offers additional protection to this species because it is a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. *Other natural or manmade factors affecting its continued existence.* The small number of individuals of *Pritchardia aylmer-robinsonii* increases the potential for extinction from naturally occurring events. A single human-caused or natural environmental disturbance could destroy the only two naturally occurring individuals as well as a significant portion of the cultivated plants on Niihau and Kauai. In addition, the limited gene pool may depress reproductive vigor.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in this final rule. Based on this evaluation, this rulemaking will list *Pritchardia aylmer-robinsonii* as endangered. This species numbers only two naturally occurring individuals in one population. Approximately 200 immature individuals have been cultivated on Niihau and Kauai. The species is threatened by habitat degradation, lack of legal protection, and/or predation by cattle, pigs, and sheep. Small population size and limited distribution make this species particularly vulnerable to reduced reproductive vigor and/or extinction from naturally occurring events. Because this species is in danger of extinction throughout all or a significant portion of its range, it fits the definition of endangered as defined in the Act.

Critical habitat is not being designated for *Pritchardia aylmer-robinsonii* for reasons discussed in the ''Critical Habitat'' section of this final rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is listed as endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *Pritchardia aylmer-robinsonii.* The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is imperiled by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

In the case of the *Pritchardia aylmer-robinsonii*, the second criterion is met. All individuals of *Pritchardia aylmer-robinsonii* are found on private lands where Federal involvement in land-use activities does not generally occur. Critical habitat has legal significance to actions authorized, funded, or carried out by Federal agencies under section 7 of the Act. Since section 7 would not apply to wholly private activities, critical habitat designation would not appreciably benefit the species in this case.

Available Conservation Measures

Conservation measures provided to species listed as endangered under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing can encourage conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed for listed species. The requirements for Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7 of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any taxon that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. When a species is listed, section 7(a)(2) of the

Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. No Federal activities are known to occur within the habitat of *Pritchardia aylmer-robinsonii*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plant species, set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to *Pritchardia aylmer-robinsonii*, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant species; transport such species in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale such species in interstate or foreign commerce; remove and reduce to possession an endangered plant species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances.

It is the policy of the Service, published in the Federal Register on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of listing on proposed or ongoing activities. *Pritchardia aylmer-robinsonii* exists as two individuals in one population on privately owned land. Since there is no Federal ownership, and the species is not in commercial trade, the only potential section 9 involvement would relate to removing or damaging the plant in knowing violation of State law. Hawaii's Endangered Species Act states, ''Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *'' (HRS, sect. 195D–4(a)). Federal listing automatically triggers listing under Hawaii State law, which prohibits taking of endangered plants in the State and encourages conservation by State agencies (HRS, sect. 195D–4). The Service is not aware of any other activities being conducted that will be affected by this listing and result in a violation of section 9. Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Ecoregion Manager of the Service's Pacific Islands Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; Facsimile 503/231–6243).

National Environmental Policy Act

The Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Ecoregion (see **ADDRESSES** section).

Authors

The authors of this final rule are Marie M. Bruegmann and Zella E. Ellshoff, Pacific Islands Ecoregion, (see **ADDRESSES** section) (808/541–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under flowering plants, to the List of Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Flowering Plants:							
*	*	*	*	*	*	*	
Pritchardia aylmer-robinsonii.	Wahane	U.S.A. (HI)	Arecaceae	E	586	NA	NA
*	*	*	*	*	*	*	

Dated: July 19, 1996.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 96–19963 Filed 8–6–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 073196A]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Eastern Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of northern rockfish in the Eastern Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catches of northern rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the northern rockfish total allowable catch (TAC) in the Eastern Regulatory Area of the GOA has been reached.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), August 1, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

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

The TAC for northern rockfish in the Eastern Regulatory Area of the GOA was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996), as 20 metric tons. (See § 679.20(c)(3)(ii).)

The Director, Alaska Region, NMFS, has determined, in accordance with § 679.20(d)(2), that the TAC for northern rockfish in the Eastern Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of northern rockfish in the Eastern Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

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

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

Dated: August 1, 1996.

Richard W. Surdi,

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

[FR Doc. 96–20056 Filed 8–1–96; 4:40 pm]

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Proposed Rules

Federal Register
Vol. 61, No. 153
Wednesday, August 7, 1996

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1710, 1714, 1717, and 1786

RIN 0572–AB24

RUS Policies on Mergers and Consolidations of Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) proposes to streamline its regulations through amendments that are intended to encourage electric borrowers to merge, consolidate, or enter into similar arrangements that benefit borrowers and rural communities and are consistent with the interests of the Government as a secured lender. These amendments are part of an ongoing RUS project to modernize agency policies and procedures in order to provide borrowers with the flexibility they need to continue providing reliable electric service at reasonable cost in rural areas, while maintaining the integrity of Government loans.

DATES: Written comments must be received by RUS or carry a postmark or equivalent by September 6, 1996.

ADDRESSES: Written comments should be addressed to Sue Arnold, Financial Analyst, Program Support and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, 14th Street and Independence Ave, SW., AgBox 1522, Washington, DC 20250–1522. RUS requires, in hard copy, a signed original and 3 copies of all comments (7 CFR 1700.30(e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Financial Analyst, U.S. Department of Agriculture, Rural Utilities Service, Room 2230–S, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522. Telephone: 202–720–0736. FAX: 202–720–4120. E-mail: sarnold@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) is taking this regulatory action as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force. This regulatory action has been determined to be significant for the purposes of Executive Order 12866, Regulatory Planning and Review, and, therefore has been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and, therefore, the Regulatory Flexibility Act does not apply to this proposed rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment. This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in Sec. 3. of the Executive Order.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) RUS is requesting comments on the information collection incorporated in this proposed rule.

Comment on this information collection must be received by October 7, 1996.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information; (c) Ways to enhance the quality, utility and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

For further information contact Sue Arnold, Financial Analyst, Program Support and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, STOP 1522, Room 2230–S, 1400 Independence Avenue, SW., Washington, DC 20250–1522. Telephone: 202–720–0736. FAX: 202–720–4120. E-mail: sarnold@rus.usda.gov.

Title: 7 CFR 1717 subpart D, Mergers and Consolidations of Electric Borrowers.

Type of request: New information collection.

Abstract: In response to the rapid changes in the electric industry, an increasing number of RUS electric distribution borrowers are exploring the possibilities of mergers, consolidations, and similar actions. (This rule uses the term ''merger'' to refer to mergers, consolidations, and similar actions.) Since short-term financial stresses often follow mergers that offer long-term benefits, RUS is proposing measures that can provide some relief from these transitional stresses. These measures are intended to maintain the credit quality of the RUS loan portfolio while providing borrowers with the flexibility to react quickly to business opportunities and challenges. Secondly, RUS is proposing a streamlined application process for mergers that require RUS approval. The application will rely, as far as possible, on documents and analyses that are either required by state law, or that any prudent business would prepare for its own use in evaluating the costs and

benefits of a possible merger. Finally, RUS, as a secured lender, needs certain documentation in order to legally conduct business with a newly merged entity. This documentation, for the most part, consists of copies of documents filed with state and local governments and documentation that would be needed by any secured lender.

Requests to enter into mergers are initiated by borrowers; RUS may not require borrowers to enter into mergers.

Since mergers reduce the number of borrowers, and reducing the number of borrowers reduces costs to both borrowers and RUS of preparing and processing multiple applications and servicing multiple loans, the proposed rules will result in a net decrease in burden hours to borrowers and to RUS. This net decrease will be reflected in requests to renew existing information collections.

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Businesses, including not for profit cooperatives and others.

Estimated number of respondents each year: 25.

Estimated number of responses per respondent: 8.

Estimated total annual burden on respondents: 249 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Support and Regulatory Analysis, Rural Utilities Service. Phone: 202–720–0812.

Send comments regarding this information collection requirement to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Desk Officer, USDA, Room 10102 New Executive Office Building, Washington, DC 20503, and to Sue Arnold, Financial Analyst, Program Support and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Washington, DC 20250–1522.

Comments are best assured of having full effect if OMB receives them within 30 days of publication in the Federal Register.

All comments will become a matter of public record.

Background

The electric industry is becoming increasingly competitive. Recent legislation, including the Energy Policy Act of 1992 and actions by the Federal Energy Regulatory Commission (FERC), such as its rules on Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, published May 10, 1996, at 61 FR 21539, are drastically altering the regulatory and business environment of all electric systems, including systems financed by RUS. At the same time, changes in overall business trends and in technology continue to place pressure on RUS financed systems to operate more efficiently and hedge risks.

It is clear that the success of the RUS program in supporting rural infrastructure and economic development is directly tied to the ability of RUS electric borrowers to meet these new challenges. In order to maintain and improve the electric infrastructure that is vital to rural communities, borrowers must have the flexibility to respond quickly and aggressively to business opportunities and challenges. At the same time, RUS as a secured lender has a fiduciary responsibility to protect the security of Government loans and avoid defaults.

One frequent response to the challenge of a volatile industry in transition is a merger or consolidation. (This rule uses the term ''merger'' to refer to mergers, consolidations, and similar actions.) RUS has historically encouraged mergers that benefit borrowers and rural communities, when these arrangements are consistent with the interests of the Government as a secured lender. RUS continues to urge borrowers to explore any and all opportunities for operating efficiencies and other economies.

The amendments proposed today are intended to encourage beneficial mergers involving RUS borrowers and, as far as possible, to remove any unnecessary impediments to such mergers. Examples of possible tangible benefits to borrowers and the rural communities they serve and to RUS as a secured lender include: Contributing to greater operating efficiency and financial soundness by combining resources, diversifying loads or other means; assisting rural economic development by diversifying the local economic base or alleviating unemployment; and other benefits consistent with the purposes of the Rural Electrification Act (RE Act).

Transitional Assistance

RUS recognizes that short-term financial stresses can follow even the most beneficial mergers. To help stabilize electric rates during this period, enhance the credit quality of outstanding loans made or guaranteed by the Government, and otherwise ease the transition period before long-term efficiencies and economies can be realized, RUS is proposing new policies for transitional assistance following mergers.

RUS will consider requests for transitional assistance after each merger. For example, if three borrowers form a single successor through two consecutive mergers, transitional assistance may be available, subject to RUS regulations, following each of the mergers. For transitional assistance available for a closed-ended period after a merger, the availability period will begin tolling on the effective date of the most recent merger even if that date is prior to the effective date of this rule.

Transitional assistance addresses (1) Loan processing priority; (2) Supplemental financing requirements; (3) Reimbursement of general funds and interim financing; (4) Deferments of interest and principal; (5) Coverage ratios; and (6) Advance of funds.

1. Loan Processing Priority

Current policy on mergers (7 CFR 1710.108 and .119) offers some transitional assistance in the form of priority consideration to processing loans to newly merged and consolidated systems for a period of up to five years after RUS approval of a merger, provided that the merger has been determined to enhance the repayment or security of RUS loans. Virtually all mergers place stress on short-term cash flows. Therefore, today's rule proposes in § 1717.154(a)(1) to offer loan processing priority upon the borrower's request, for the first loan to a successor, provided that the loan is approved by RUS not later than 5 years after the effective date of the merger. For subsequent loans approved during those 5 years, RUS may agree to priority processing if the borrower demonstrates the need, and loan funds are available.

Pursuant to RUS regulations published December 29, 1995, at, 60 FR 67395, many mergers are exempt from RUS approval. Therefore, to avoid confusion, today's rule further proposes a minor amendment that will allow loan processing priority for up to 5 years from the effective date of the merger, instead of from the date of RUS approval.

2. Supplemental Financing Requirements

RUS generally requires that an applicant for a municipal rate loan obtain a portion of its debt financing from a supplemental source without an RUS guarantee. The method for calculating the supplemental financing proportion is set out in 7 CFR 1710.110, as amended January 19, 1995, at 60 FR

3730. Today's rule proposes in § 1717.154(a)(2) a waiver of supplemental financing, at the borrower's request, for the first RUS loan approved after the effective date of a merger if all parties are active distribution borrowers and if that first loan is a municipal rate loan, the loan period does not exceed 2 years, and the loan is approved by RUS not later than 5 years after the effective date of the merger.

For any subsequent loans approved during those 5 years, or if the borrower requests a loan period longer than 2 years, RUS may agree to waive or reduce the required amount of supplemental financing. RUS would consider such reduction or waiver if the higher interest rate usually charged by a supplemental lender would materially inhibit the borrower's ability to integrate the systems or create a significant hardship that could require an increase in electric rates.

3. Reimbursement of General Funds and Interim Financing

Borrowers may request RUS loan funds to reimburse general funds and/or interim financing used to finance equipment and facilities included in a RUS approved construction work plan or amendment if the construction was completed immediately preceding the current loan period. Pursuant to existing rules at 7 CFR 1710.109, this period is limited to 24 months for loan applications received after February 10, 1993. Today's rule proposes in § 1717.154(a)(3) to increase this period to up to 48 months for the first RUS loan following a merger where all parties are active distribution borrowers, if that first loan is approved by RUS not later than 5 years after the effective date of the merger. The longer reimbursement period will assist borrowers in managing their cash flows during the transition. The requirement that equipment and facilities be included in a RUS approved construction work plan in order to be eligible for reimbursement by RUS is not affected by this change.

4. Deferments of Interest and Principal

Section 12 of the RE Act allows RUS to extend the time for repayment of loans by up to 5 years. Under a Section 12 deferment plan, notes retain their original maturity dates—the final maturity is not extended. Although deferment of debt service payments today, results in higher payments in the future, deferments may be useful to mitigate rate increases during a transition period after a merger or consolidation. Today's rule proposes in § 1717.154(b)(1) to codify this long-standing policy of granting a Section 12 deferment to a successor.

5. Coverage Ratios

RUS, as a secured lender, requires that borrowers maintain adequate levels of coverage ratios, including times interest earned ratio (TIER); operating times interest earned ratio (OTIER); debt service coverage (DSC); and operating debt service coverage (ODSC). The specific level for each ratio is set forth in the RUS loan documents and in 7 CFR 1710.114. New forms of loan documents were issued in final rules published on July 18, 1995, at 60 FR 36882, and on December 29, 1995, at 60 FR 67396. Section 1710.114 was last amended in the December 29, 1995, final rule.

The rule proposed today will, in § 1717.154(b)(2), allow RUS to approve a plan for a phase-in period of up to 5 years following a merger if all parties are active distribution borrowers. Under this rule, borrowers may project and achieve lower levels for these ratios for up to 5 years following a merger, provided that RUS has approved a phase-in plan, and that a minimum TIER level of 1.00 is maintained. This phase-in period will allow borrowers the flexibility to devote resources to integrating the systems and may avoid substantial rate increases.

6. Advance of Funds From Insured Loans

RUS is further proposing to automatically lengthen the fund advance period for insured loans preexisting on the effective date of a merger. The fund advance period, which is the period during which funds from an insured loan may be advanced to the borrower, generally terminates automatically after 4 or 5 years unless the borrower requests, and RUS approves, an extension. See 7 CFR 1714.56, as amended January 19, 1995, at 60 FR 3726. However, the execution and filing of legal documents following a merger often takes some time, and RUS cannot advance funds to a successor until these documents are properly executed and filed. In order to ensure that approved loan funds are available to borrowers without unnecessary procedural delays, RUS proposes in § 1717.154(c) to generically extend the fund advance period by 2 years for any loans with unadvanced funds on the effective date of the merger, if the fund advance period has not already terminated.

For example, under current rules, the fund advance period for a loan approved in March 1995 with a 4-year loan period terminates automatically 5 years from the date of the loan note. Under the proposed rule, after a merger the fund advance period would be extended by 2 years and would terminate automatically 7 years from the date of the loan note.

Borrowers Who Prepaid RUS Loans Pursuant to 7 CFR Part 1786

Pursuant to 7 CFR part 1786, subparts C, E and F, borrowers may use private financing or internally generated funds to prepay RUS direct or insured loans at a discounted present value. Borrowers who prepay under this rule may not apply for or receive any new direct or insured loans from RUS for a period after the prepayment, except at the Administrator's discretion.

In order to remove unnecessary impediments to beneficial mergers between systems that have prepaid their RUS debt and active distribution systems that still have outstanding loans, RUS is amending rules setting out the Administrator's discretionary authority. Under the proposed rules (§§ 1717.156 and 1786.167), the Administrator will exercise this discretionary authority to make direct or insured loans for facilities to serve consumers who, before the merger, were served by the system that did not prepay. In other words, eligibility for RUS loans for that portion of the successor's system that was owned by the active borrower prior to the merger, will be grandfathered as if the merger had not occurred.

RUS Procedures

The requirement that RUS, as a secured lender, generally approve mergers is in the loan documents and RUS regulations. Under certain conditions, set out in 7 CFR 1717.615 and 1710.7(c), as published December 29, 1995, at 60 FR 67395, borrowers may enter into such mergers without RUS approval.

To clarify RUS requirements for approval of mergers, and to expedite handling of borrower requests, today's rule proposes in §§ 1717.157–1717.159, a procedure for RUS approvals, where the approvals are needed, including a list of the documents required, and the factors that RUS will consider in acting on such requests. With the exception of a formal transmittal letter and board resolution from each of the companies involved, RUS believes that the documents and analyses required are either (1) Prepared by any prudent business attempting to enter into a merger; (2) Required by state law; or (3) Required by any secured lender.

In evaluating an application, RUS will consider the likely impacts of the

merger on the borrower's ability to provide reliable service at reasonable rates to RE Act beneficiaries. RUS will not approve the action if, in the sole judgment of the Administrator, the action is likely to have an adverse effect on the security of outstanding loans made or guaranteed by the Government. It is the borrower's responsibility to resolve internal issues such as management and director succession, employee benefits, and headquarters location. Borrowers are further responsible for obtaining any necessary approvals from state commissions, supplemental lenders, and others.

Regardless of whether the merger requires RUS approval, RUS, as a secured lender, needs certain documentation in order to advance funds, send bills, and otherwise conduct business with a successor. Today's proposed rule in § 1717.152, lists the documents required. Generally, these are copies of documents that borrowers are required to file with state or local governments or documentation needed by any secured lender.

In all cases, borrowers are encouraged to consult RUS early in the process. RUS headquarters and field staff are prepared to advise borrowers and offer technical assistance to facilitate the processing of borrower requests. In particular, early consultation with RUS can avoid unnecessary delays in processing requests for advance of loan funds.

Rescission of Obsolete Directive

On the effective date of the final regulation, REA Bulletin 115–2, Merger and Consolidation of Electric Borrowers will be rescinded. RUS has determined that this bulletin, issued November 9, 1972, is obsolete.

Eligibility for and Hardship Rate and Municipal Rate Loans

RUS makes hardship rate loans and municipal rate loans subject to an interest rate cap, if the applicant meets certain criteria. See ¶¶ 305(c)(1)(A) and (c)(1)(B)(ii) of the RE Act, and 7 CFR part 1714. As required by the law, RUS will consider the eligibility of the successor at the time of loan approval in determining the applicable interest rate category. In other words, to qualify for a hardship rate loan or a municipal rate loan subject to the interest rate cap, the successor as a whole must, at the time of loan approval, meet the criteria in 7 CFR 1714.8 or 1714.7, respectively.

Comment Period

It is vital that RUS, borrowers, supplemental lenders, and others continue the public-private partnership that has served rural America well in the past. RUS and the Department of Agriculture's Office of the General Counsel recognize that business opportunities often have short deadlines, and every effort will be made to expedite action on borrower requests and to respond in a timely fashion.

There is an urgent need for flexible responses to the increasing business stress on rural electric systems. This rule, by encouraging and expediting mergers that offer economies and efficiencies not available otherwise, will result in tangible benefits, such as lower electric rates, to the rural communities served by electric distribution borrowers. Furthermore, reducing the number of RUS borrowers through mergers and consolidations will ultimately reduce the costs to the Federal Government of processing multiple applications and servicing multiple loans. To expedite these benefits, the comment period on this proposed rule is limited to 30 days. RUS encourages all interested parties to comment. New information collection requirements in this rule will not be effective until approved by OMB.

List of Subjects

7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Rural areas.

7 CFR Part 1714

Electric Power, Loan programs—energy, Rural areas.

7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric utilities, Intergovernmental relations, Investments, Lien accommodation, Lien subordinations, Loan programs—energy, Reporting and recordkeeping requirements, Rural development.

7 CFR Part 1786

Accounting, Administrative practice and procedure, Electric utilities.

For the reasons set out in the preamble, and under the authority of 7 U.S.C. 901 *et seq.*, RUS proposes to amend 7 CFR Chapter XVII as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901–950b; Public Law 99–591, 100 Stat. 3341–16; Public Law 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. Section 1710.109 is amended by redesignating paragraphs (c) introductory text, (c)(1), (c)(2), and (c)(3) as paragraphs (c)(1) introductory text, (c)(1)(i), (c)(1)(ii), and (c)(1)(iii), respectively, and by adding a new paragraph (c)(2) to read as follows:

§ 1710.109 Reimbursement of general funds and interim financing.

* * * * *

(c) * * *

(2) Policies for reimbursement of general funds and interim financing following certain mergers, consolidations, and transfers of a systems substantially in their entirety are set forth in 7 CFR 1717.154.

* * * * *

3. Section 1710.110 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 1710.110 Supplemental financing.

(a) Except in the case of financial hardship as determined by the Administrator, and following certain mergers, consolidations, and transfers of systems substantially in their entirety as set forth in 7 CFR 1717.154, applicants for a municipal rate loan will be required to obtain a portion of their loan funds from a supplemental source without an RUS guarantee, in the amounts set forth in paragraph (c) of this section. * * *

* * * * *

4. Section 1710.114 is amended by adding a sentence at the end of paragraph (b)(3) to read as follows:

§ 1710.114 TIER, DSC, OTIER and ODSC requirements.

* * * * *

(b) * * *

(3) * * * Policies for coverage ratios following certain mergers, consolidations, and transfers of systems substantially in their entirety are in 7 CFR 1717.154.

* * * * *

5. Section 1710.119 is amended by revising paragraph (b)(3) to read as follows:

§ 1710.119 Loan processing priorities.

* * * * *

(b) * * *

(3) To finance the capital needs of borrowers that are the result of a merger, consolidation, or a transfer of a system substantially in its entirety, provided that the merger, consolidation, or transfer has either been approved by RUS or does not need RUS approval pursuant to the borrower's loan documents (See 7 CFR 1717.154); or

* * * * *

PART 1714—PRE-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

6. The authority citation for part 1714 continues to read as follows:

Authority: 7 U.S.C. 901–950(b); Pub.L. 99–591, 100 Stat. 3341; Pub.L. 103–353, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*)

7. Section 1714.56 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 1714.56 Fund advance period.

* * * * *

(c) The Administrator may agree to an extension of the fund advance period for loans approved on or after June 1, 1984, if the borrower demonstrates to the satisfaction of the Administrator that the loan funds continue to be needed for approved loan purposes (i.e., facilities included in an RUS approved construction work plan). Policies for extension of the fund advance period following certain mergers, consolidations, and transfers of systems substantially in their entirety are set forth in 7 CFR 1717.154.

* * * * *

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

8. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901–950(b); Pub.L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*), unless otherwise noted.

9. Subpart D is added to part 1717 to read as follows:

Subpart D—Mergers and Consolidations of Electric Borrowers

Sec.
1717.150 General.
1717.151 Definitions.
1717.152 Required documentation for all mergers.
1717.153 Transitional assistance.
1717.154 Types of transitional assistance.
1717.155 Requests for transitional assistance.
1717.156 Mergers with borrowers who prepaid RUS loans
1717.157 Applications for RUS approval of mergers.
1717.158 Application contents.
1717.159 Application process.

Subpart D—Mergers and Consolidations of Electric Borrowers

§ 1717.150 General.

(a) This subpart establishes RUS policies and procedures for mergers of electric borrowers. These policies and procedures are intended to provide borrowers with the flexibility to negotiate and enter into mergers that offer advantages to the borrowers and to rural communities, and adequately protect the integrity and credit quality of RUS loans and loan guarantees.

(b) Consistent with prudent lending practices, the maintenance of adequate security for RUS loans and loan guarantees, and the objectives of the Rural Electrification Act of 1936, as amended, (7 U.S.C. 901 *et seq.*) (RE Act), RUS encourages electric borrowers to consider mergers when such action is likely to contribute, in the long-term, to greater operating efficiency and financial soundness. Borrowers are specifically encouraged to explore mergers that are likely to enhance the ability of the successor to provide reliable electric service at reasonable cost to RE Act beneficiaries.

(c) Pursuant to the loan documents and RUS regulations, certain mergers are subject to RUS approval. See § 1717.615.

(d) Since RUS must take action in order to legally advance funds and otherwise conduct business with a successor, RUS encourages borrowers to consult RUS early in the process regardless of whether RUS approval of the merger is required. RUS will provide technical assistance and guidance to borrowers to help expedite the processing of their requests and to help resolve potential problems early in the process.

§ 1717.151 Definitions.

The definitions set forth in 7 CFR 1710.2 are applicable to this subpart unless otherwise stated. In addition, for the purpose of this subpart, the following terms shall have the following meanings:

Active borrower means an electric borrower that has, on the effective date, an outstanding insured or guaranteed loan from RUS for rural electrification, and whose eligibility for future RUS financing is not restricted pursuant to 7 CFR part 1786.

Active distribution borrower means an electric distribution borrower that has, on the effective date, an outstanding insured or guaranteed loan from RUS for rural electrification, and whose eligibility for future RUS financing is not restricted pursuant to 7 CFR part 1786.

Consolidation see *merger*.

Coverage ratios means collectively TIER, OTIER, DSC and ODSC, as these terms are defined in 7 CFR 1710.2.

Effective date means the date a merger is effective pursuant to applicable state law.

Loan documents means the mortgage (or other security instrument acceptable to RUS), the loan contract, and the promissory note(s) entered into between the borrower and RUS.

Merger means: (1) A consolidation where two or more companies are extinguished and a new successor is created, acquiring the assets, liabilities, franchises and powers of those passing out of existence;

(2) A merger where one company is absorbed by another, the former ceasing to exist as a separate business entity, and the latter retaining its own identity and acquiring the assets, liabilities, franchises and powers of the former; or

(3) A transfer of mortgaged property by one company to another where the transferee acquires substantially as an entirety the assets, liabilities, franchises, and powers of the transferor.

New loan means a loan to a successor approved by RUS on or after the effective date.

Preexisting loan means a loan to a borrower approved by RUS prior to the effective date of a merger.

Successor means the entity that continues as the surviving business entity as of the effective date of the merger, and acquires all the assets, liabilities, franchises, and powers of the entity or entities ceasing to exist as of the effective date.

Transitional assistance means financial relief provided to borrowers by RUS during a limited period of time following a merger.

§ 1717.152 Required documentation for all mergers.

In order for RUS to legally advance funds, send bills, and otherwise conduct business with a successor, the documents listed in this section must be submitted to RUS regardless of the need for RUS approval of the merger. Borrowers are responsible for ensuring that these documents are received by RUS in timely fashion. In cases of mergers that require RUS approval, or cases where borrowers must submit requests for transitional assistance, the documents listed in this section may be combined with the documents required by §§ 1717.155 and/or 1717.158 where appropriate.

(a) Prior to the effective date, borrowers must submit:

(1) A transmittal letter on corporate letterhead signed by the manager of each active borrower that is a party to the proposed merger indicating the borrower's intention to merge and tentative timeframes, including the proposed effective date;

(2) An original certified board resolution from each party to the proposed merger affirming the board's support of the merger;

(3) All documents necessary to evidence the merger pursuant to applicable law. Examples include plan of merger, articles of merger, amended articles of incorporation, bylaws, and notices and filings required by law. These documents may be copies of documents filed elsewhere, unless otherwise specified by RUS; and

(4) A letter addressed to the Administrator from the counsel of at least one of the active borrowers briefly describing the merger and indicating the relevant statutes under which the merger will be consummated.

(b) On or after the effective date, borrowers must submit:

(1) An opinion of counsel from the successor addressing, among other things, any pending litigation, proper authorization and consummation of the merger, proper filing and perfection of RUS' security interest, and all approvals required by law. RUS will provide the form of the opinion of counsel to the successor;

(2) A letter signed by the manager of the successor advising RUS of the effective date of the merger; the corporate name, address, and phone number; the names of the officers of the successor; and the taxpayer identification number; and

(3) Evidence of proper filing and perfection of RUS' security interest, as instructed by RUS, and an executed loan contract.

§ 1717.153 Transitional assistance.

RUS recognizes that short-term financial stresses can follow even the most beneficial mergers. To help stabilize electric rates, enhance the credit quality of outstanding loans made or guaranteed by the Government, and otherwise ease the transition period before the long-term efficiencies and economies of a merger can be realized, RUS may approve one or more types of transitional assistance to a successor under the conditions set forth in this part.

§ 1717.154 Types of transitional assistance.

(a) *Transitional assistance in connection with new loans.* Requests for transitional assistance in connection with new loans may be submitted to RUS no later than the loan application.

(1) *Loan processing priority.* RUS loans are generally processed in chronological order based on the date the complete application is received in the regional or division office. At the borrower's request, RUS will offer loan processing priority for the first loan to a successor, provided that the loan is approved by RUS not later than 5 years after the effective date of the merger. For any subsequent loans approved during those 5 years, RUS may offer loan processing priority, subject to the availability of loan funds. In reviewing requests for loan processing priority on subsequent loans, RUS will consider the borrower's projected cash flows, its electric rates and rate disparity, and the likely mitigating effects of priority loan processing See 7 CFR 1710.108 and 1710.119.

(2) *Supplemental financing.* RUS generally requires that an applicant for a municipal rate loan obtain a portion of its debt financing from a supplemental source without an RUS guarantee. See 7 CFR 1710.110. If all parties to the merger are active distribution borrowers, RUS will, at the borrower's request waive the requirement to obtain supplemental financing for the first RUS loan approved after the effective date if that first loan is a municipal rate loan whose loan period does not exceed 2 years, and the loan is approved by RUS not later than 5 years after the effective date of the merger. For any subsequent loans approved during these 5 years, or if the borrower requests a loan period longer than 2 years, RUS may, subject to the availability of loan funds, waive or reduce the amount of supplemental financing required. In reviewing requests to reduce or waive supplemental financing on subsequent loans or on loans with a loan period longer than 2 years, RUS will consider the differences in interest rates between RUS and supplemental loans and the impacts of this difference on the borrower's projected cash flows and its electric rates and rate disparity. If significant differences result, the waiver will be granted.

(3) *Reimbursement of general funds and interim financing.* Borrowers may request RUS loan funds to reimburse general funds and/or interim financing used to finance equipment and facilities included in a RUS approved construction work plan or amendment if the construction was completed immediately preceding the current loan period. This reimbursement period is generally limited to 24 months. See 7 CFR 1710.109. If all parties to the merger are active distribution borrowers, RUS may, in connection with the first RUS loan approved after the effective date, approve a reimbursement period of up to 48 months prior to the current loan period if the loan is approved not later than 5 years after the effective date. In reviewing requests for a longer reimbursement period, RUS will consider the stresses that the transaction and other costs of entering into the merger places on the borrower's rates and cash flows, and the mitigating effects of more generous reimbursement.

(b) *Transitional assistance affecting new and preexisting loans.* Requests for transitional assistance affecting new and preexisting loans must be received by RUS no later than 2 years after the effective date of the merger.

(1) *Section 12 deferments.* Section 12 of the RE Act (7 U.S.C. 912) allows RUS to extend the time of payment of interest or principal of RUS loans. Section 12 deferments do not extend the final maturity of the loan; lower payments during the deferment period result in higher payments later. Therefore, RUS may approve a Section 12 deferment of loan payments of up to 5 years only if such deferments will help to avoid substantial increases in retail electric rates during the transition period, without placing borrowers in financial stress after the deferment period.

(2) *Coverage ratios.* Required levels for coverage ratios are set forth in 7 CFR 1710.114 and in the loan documents. If all parties to the merger are active distribution borrowers, RUS may approve a plan, on a case by case basis, that provides for a phase-in period for these coverage ratios of up to 5 years from the effective date. Under such a plan the successor would be permitted to project and achieve lower levels for one or more of these coverage ratios during the phase-in period.

(i) A phase-in plan for coverage ratios must provide a pro forma level for each ratio during each year of the phase-in period and be supported by a financial forecast covering a period of not less than 10 years from the effective date of the merger. The plan must demonstrate that a minimum TIER level of 1.00 will be achieved in each year, that trends will be generally favorable, and that the borrower will achieve the levels required in its loan documents and RUS regulations by the end of the phase-in period, and that these levels will be maintained in subsequent years.

(ii) In reviewing phase-in plans for coverage ratios, RUS will review rates, rate disparity, and likely mitigating effects of the proposed phase-in plan.

(iii) The borrower is responsible for obtaining approvals of supplemental lenders.

(iv) Upon RUS approval of a phase-in plan, the levels in that plan will be substituted for the levels required in the borrower's preexisting loan documents and will be incorporated in any new loan or security documents.

(c) *Transitional assistance affecting preexisting loans.* The fund advance period for an insured loan, which is the

period during which RUS may advance loan funds to a borrower, terminates automatically after a specific period of time. See 7 CFR 1714.56. If, on the effective date of a merger the fund advance period on any preexisting loan to any of the active borrowers involved in a merger has not terminated, such fund advance period shall be automatically lengthened by 2 years. Such documents will be prepared upon the request of a borrower to RUS for the advance of loan funds, RUS will prepare documents for the borrower's execution that will reflect this extension and will provide the legal authority for RUS to advance funds to the successor.

§ 1717.155 Requests for transitional assistance.

(a) If the merger requires RUS approval, the borrower should, where possible, indicate that it desires transitional assistance at the time it requests approval of the merger. The formal request for transitional assistance must be received by RUS as specified in §§ 1717.154(a) and (b). Documents listed in this section may be combined with the documents required by §§ 1717.152 and/or 1717.158 where appropriate. If the request for transitional assistance is submitted at the same time as a loan application, documents listed in this section may be combined with the loan application documents where appropriate. See 7 CFR part 1710, subpart I. A request for transitional assistance must include:

(1) Transmittal letter(s) formally listing the types of transitional assistance requested. If the request is submitted before the effective date, a transmittal letter must be signed by the manager of each party to the transaction. If the request is submitted on or after the effective date, a transmittal letter must be signed by the manager of the successor. Transmittal letter(s) must be signed originals on corporate letterhead stationery;

(2) Board resolution(s). If the request is submitted before the effective date, a separate board resolution must be submitted from each entity involved in the merger. If the request is submitted on or after the effective date, a board resolution from the successor must be submitted. Each board resolution must be a certified original;

(3) A merger plan, financial forecasts, and any available studies such as net present value analyses showing the anticipated costs and benefits of the merger and likely timeframes for the merger. The merger plan must clearly identify those benefits that cannot be achieved without a merger, and those benefits that can be achieved through other means;

(4) If the transitional assistance requires RUS approval, the type and extent of the mitigation that the transitional assistance is expected to provide; and

(5) Other information that may be relevant.

(b) Borrowers are responsible for ensuring that requests for transitional assistance are complete and sound in form and substance when they are submitted to RUS. After submitting a request, borrowers shall promptly notify RUS of any changes or events that materially affect the request or any information in the request.

(c) In considering whether to approve requests for transitional assistance, RUS will evaluate the costs and benefits of the merger; the type and extent of the likely transitional stress; whether the transitional assistance requested is likely to materially mitigate such stress; and the likely impacts on electric rates and on the security of RUS loans. Review factors applicable to each type of transitional assistance are set forth in § 1717.154.

§ 1717.156 Mergers with borrowers who prepaid RUS loans

In some cases, an active distribution borrower may merge with a borrower that has prepaid RUS debt at a discount pursuant to 7 CFR part 1786, and whose eligibility for future RUS financing is thereby restricted. During the period when the restrictions on future financing are in effect, the successor will be eligible for RUS loans to finance facilities to serve consumers that were served by the active distribution borrower immediately prior to the effective date of the merger, provided that other requirements for loan eligibility are met.

§ 1717.157 Applications for RUS approvals of mergers.

If a proposed merger requires RUS approval according to RUS regulations and/or the loan documents executed by any of the active borrowers involved, the application must be submitted to RUS not later than 90 days prior to the effective date of the proposed borrower action. A distribution borrower should consult with its assigned RUS general field representative, and a power supply borrower with the Director, Power Supply Division for general information prior to submitting the request.

§ 1717.158 Application contents.

An application for RUS approval must include the documents listed in this section. Documents listed in this section may be combined with the documents required by §§ 1717.152 and/or 1717.155 where appropriate.

(a) *Transmittal letters* signed by the managers of all borrowers and non-borrowers who are parties to the proposed merger. These letters must include the actual corporate name, address, and taxpayer identification number of all parties to the proposed merger. The transmittal letters must be signed originals on corporate letterhead stationery.

(b) *Resolutions from the boards of directors* of all borrowers and non-borrowers who are parties to the proposed merger. This document is the formal request by each entity for RUS approval of the proposed merger. The board resolution must include a description of the proposed merger, including timeframes, and authorization for RUS to release appropriate information to supplemental or other lenders, and for these lenders to release appropriate information to RUS. Each board resolution must be a certified original.

(c) *Evidence* that the proposed merger will result in a viable entity, and that the security of outstanding RUS loans will not be compromised by the action. This evidence shall include financial forecasts, and any available studies such as net present value analyses covering a period of not less than 10 years from the effective date of the merger, as well as information about any threatened actions by other parties that could adversely affect the financial condition of any of the parties to the proposed merger, or of the successor. Such threatened actions may include annexations or other actions affecting service territory, loads, rates or other such matters.

(d) *Regulatory information* about pending federal or state proceedings pertaining to any of the parties that could have material effects on the successor.

(e) *Rate information*. Distribution and power supply borrowers shall submit schedules of proposed rates after the merger, including the effects of the proposed action on rates and the status of any pending rate cases before a state regulatory authority. The rates of power supply borrowers are subject to RUS approval.

(f) *Area coverage and line extension policies*: If any distribution systems are parties to the proposed merger, a statement of proposed area coverage and line extension policies for the successor.

§ 1717.159 Application process.

(a) Borrowers are responsible for ensuring that their applications for RUS

approval of a merger are complete and sound in form and substance when they are submitted to RUS. After submitting an application, borrowers shall promptly notify RUS of any changes or events that materially affect the application or any information in the application.

(b) In reviewing borrower requests for approval of mergers, RUS will consider the likely effects of the action on the ability of the successor to provide reliable electric service at reasonable cost to RE Act beneficiaries and on the security of outstanding RUS loans. Among the factors RUS will consider are whether the proposed merger is likely to:

(1) Contribute to greater operating efficiency and financial soundness;

(2) Mitigate high electric rates and or rate disparity;

(3) Help borrowers to diversify their loads or otherwise hedge risks;

(4) Have beneficial effects on rural economic development in the community served by the borrower, such as diversifying the economic base or alleviating unemployment; and

(5) Provide other benefits consistent with the purposes of the RE Act.

(c) RUS will not approve a merger if, in the sole judgment of the Administrator, such action is likely to have an adverse effect on the credit quality of outstanding loans made or guaranteed by the Government. RUS will thoroughly review each request for approval of such action, including review of the feasibility and security of outstanding Government loans according to the standards in 7 CFR 1710.112 and 1710.113, respectively, and in other RUS regulations.

(d) RUS will keep the borrowers apprised of the progress of their applications.

PART 1786—PREPAYMENT OF RUS GUARANTEED AND INSURED LOANS TO ELECTRIC AND TELEPHONE BORROWERS

Subpart F—Discounted Prepayments on RUS Electric Loans

10. The authority citation for subpart F continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; Pub.L. 103–534, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*)

11. Section 1786.167 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 1786.167 Restrictions to additional RUS financing.

(a) * * * Special provisions for mergers involving a borrower that has prepaid pursuant to this subpart are in 7 CFR 1717.156.

* * * * *

Dated: July 29, 1996.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 96–19711 Filed 8–6–96; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

[Docket No. EE–RM–96–200]

Alternative Fueled Vehicle Acquisition Requirements for Private and Local Government Fleets

AGENCY: Department of Energy (DOE).

ACTION: Advance Notice of Proposed Rulemaking and Notice of Public Hearings.

SUMMARY: The Department of Energy (DOE) is today publishing an advance notice of proposed rulemaking, as required by the Energy Policy Act of 1992 (the Act), that begins a process to determine whether alternative fueled vehicle (AFV) acquisition requirements for certain private and local government automobile fleets should be promulgated. This advance notice also requests comments on progress toward the goals set forth in section 502(b)(2) of the Act, identifying the problems with achieving the goals, assessing the adequacy and practicability of and considering all actions necessary to meet the goals. This advance notice is intended to stimulate comments that will inform DOE decisions concerning future rulemaking actions and non-regulatory initiatives to promote alternative fuels and alternative fueled vehicles.

DATES: Written comments (8 copies) must be received by the Department by November 5, 1996.

Oral views, data, and arguments may be presented at the public hearings, which are scheduled as follows:

1. In Dallas, TX, beginning at 10:15 a.m. on September 17, 1996.

2. In Sacramento, CA, beginning at 9:30 a.m. on September 25, 1996.

3. In Washington, D.C., beginning at 9:30 a.m. on October 9, 1996.

Requests to speak at a hearing should be received no later than 4:00 p.m., September 13, 1996 for the Dallas, TX hearing, September 23, 1996 for the Sacramento, CA hearing, and October 7, 1996 for the Washington, D.C. hearing. The length of each oral presentation is limited to 10 minutes.

ADDRESSES: The hearings will be held at the following addresses:

1. Dallas, TX—Wyndham Anatole Hotel, 2201 Stemmons Freeway (Market Center), Obelisk A Room (Mezzanine Level), Dallas, TX 75207.

2. Sacramento, CA—Secretary of State Archive/Complex, 1500 11th Street (11th & O Streets Entrance), Auditorium (Main Lobby), Sacramento, CA.

3. Washington, D.C.—U.S. Department of Energy, Forrestal Building, Auditorium, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Written comments (8 copies) and requests to speak at a hearing are to be submitted to U.S. Department of Energy, Office of Transportation Technologies, EE–33, Docket No. EE–RM–96–200, 1000 Independence Avenue, S.W., Washington, D.C. 20585, telephone (202) 586–3012. Copies of the transcript of the public hearings, written comments, technical reference materials mentioned in the notice, and any other docket material received may be read and copied at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Room 1E–190, 1000 Independence Ave. S.W., Washington, D.C. 20585, telephone (202) 586–6020 between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday except Federal holidays. The docket file material will be filed under ''EE–RM–96–200.''

For more information concerning public participation in this rulemaking proceeding, see section V of this notice (Public Comment Procedures).

FOR FURTHER INFORMATION CONTACT: David Rodgers, Office of Energy Efficiency and Renewable Energy, EE–34, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, afv-deployment@hq.doe.gov; or phone (202) 586–9171.

For information concerning the public hearings, submission of written comments; and to obtain copies of materials referenced in this notice, contact Andi Kasarsky, (202) 586–3012.

SUPPLEMENTARY INFORMATION:

I. Introduction
  A. Authority
  B. Program Background and Goals
  C. Required Rulemaking
II. General Issues Relating to Replacement Fuel Goals
III. Additional Issues Related to Required Fleet Mandate Determinations
IV. Review and Analysis Requirements
V. Public Comment Procedures
  a. Participation in Rulemaking
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c. Public Hearings
1. Procedure for Submitting Requests to Speak
2. Conduct of Hearing

I. Introduction

A. Authority

DOE today begins a rulemaking required by section 507 of the Energy Policy Act of 1992 (the Act), Pub. L. 102–486, to determine whether alternative fueled vehicle acquisition requirements for private and local government automobile fleets are ''necessary'' to achieve the Act's clean air and energy security goals. Section 507 provides for an early rulemaking to make this determination by December 15, 1996. 42 U.S.C. 13256(b). If DOE determines that vehicle acquisition requirements are not necessary in the early rulemaking, then section 507 requires a later rulemaking (beginning no later than April 1998) to determine by January 1, 2000, whether vehicle acquisition requirements are ''necessary'' in light of then current circumstances. 42 U.S.C. 13256(b)(3), (c) and (e). If DOE has not promulgated a final rule to implement an early mandate by December 15, 1996, it is precluded from doing so and must proceed to the later rulemaking. 42 U.S.C. 13256(b).

B. Program Background and Goals

The transportation sector currently accounts for approximately two-thirds of all U.S. petroleum use and roughly one-fourth of total U.S. energy consumption. A virtual one-to-one relationship exists between additional gasoline consumption and America's increased use of imported oil. The gap between the transportation sector's demand for petroleum and our domestic production continues to widen. The U.S. consumes 4 million barrels per day more for transportation purposes alone than it produces; that gap is projected to rise to 9 million barrels per day by the year 2010. According to the latest projections by the Energy Information Administration, the transportation sector will consume 14.1 million barrels per day of petroleum in 2010. About 7.4 million of these barrels are projected to be used by light duty vehicles. The transportation sector represents one of the major sources of short and medium term energy vulnerability for American society and the American economy today.

Congress enacted the Energy Policy Act of 1992, Pub. L. 102–486, in part to address these energy security and clean air concerns. Titles III, IV, V, and VI of the Act contain provisions requiring DOE to establish a variety of programs aimed at displacing substantial quantities of oil consumed by motor vehicles.

Title III sets forth mandatory requirements for Federal fleet acquisitions of alternative fueled vehicles, which began in fiscal year 1993. Since that time, over 20,000 alternative fueled vehicles have been added to the Federal fleet. Federal agencies have gained considerable experience with all alternative fuels and vehicle types. Auto manufacturers have significantly increased the number and type of alternative fueled vehicles and the number of alternative fuel refueling stations has also increased. Title IV directs DOE, among other things, to establish a program to certify alternative fuel technicians and to acquire data about alternative fuels and alternative fueled vehicles and to establish a public information program. DOE has established a cooperative program with the auto service industry and numerous technical colleges to develop and implement national standards for certification of alternative fuel training programs. Over the last several years, DOE has explored the costs and benefits of alternative fuel and AFV use in the transportation sector. A series of technical reports record the results of these analyses. The series title is Assessment of Costs and Benefits of Flexible and Alternative Fuel Use in the U.S. Transportation Sector. These reports will be placed in the public docket for this rulemaking in DOE's Freedom of Information Reading Room.

Section 502 of title V requires DOE to establish a program to promote development and use of replacement fuels, especially domestic replacement fuels, in light duty motor vehicles. DOE is to focus on those replacement fuels having the most impact in: reducing oil imports, improving the health of the Nation's economy and reducing emissions of greenhouse gases. DOE is in the process of performing analytical work to guide the design of this replacement fuel demand and supply program. Section 502(b) requires DOE to assess, among other things, the feasibility of producing adequate replacement fuels to displace 10% of U.S. motor fuel by 2000 and 30% by 2010. DOE has undertaken such a study, the partial results of which have been published by DOE's Office of Policy as Technical Report Fourteen: Market Potential and Impacts of Alternative Fuel Use in Light-Duty Vehicles: A 2000/2010 Analysis. This report is available by calling the National Alternative Fuels Hotline at 1–800–423–1DOE or 703–528–3500. A copy will be placed in the docket file for this rulemaking. DOE is also required by section 506 to prepare a Technical and Policy Analysis of various issues related to replacement fuels and alternative fueled vehicles for submission to the President and Congress. A draft of this report is under preparation and a copy will be placed in the docket for this rulemaking when it becomes available. Any comments received on this ANOPR relating to the fuel displacement goals are expected to be key parts of the process of drawing up the section 502 program.

Pursuant to section 505 of the Act, 42 U.S.C. 13255, DOE is promoting voluntary use of alternative fueled vehicles through its Clean Cities Program. Under this program, DOE joins with local governments and organizations in public/private partnerships aimed at developing markets for alternative fueled vehicles. The program aims to put together enough participants in each local area to reach the necessary volume of alternative fueled vehicle use to justify installation of refueling infrastructure and other joint facilities, as well as to promote other forms of cooperation. To date, 48 U.S. communities have signed agreements to participate.

Title V also contains non-discretionary alternative fueled vehicle acquisition requirements. Sections 501 and 507(o) of the Act require certain State government fleets and alternative fuel providers to include increasing percentages of alternative fueled vehicles in their annual acquisitions of new light duty vehicles. DOE published a final rule to implement these vehicle acquisition requirements on March 14, 1996. 61 FR 10621.

C. Required Rulemaking

This advance notice of proposed rulemaking is the first step in a required rulemaking under sections 507(a) and (b) of title V of the Act for determining whether local government and private fleets (other than alternative fuel providers subject to section 501) should be required to acquire alternative fueled vehicles. 42 U.S.C. 13257(a) and (b). A DOE decision to impose alternative fueled vehicle acquisition requirements on private and local fleets is dependent on a determination that such requirements are ''necessary'' to achieve the clean air and energy security goals in sections 502 and 504.

Such a fleet mandate would cover local government and private fleets (excluding alternative fuel provider fleets covered by section 501 of the Act) of 20 or more light duty motor vehicles (including passenger cars and trucks

under 8500 lbs. gross vehicle weight), which are:

- Centrally fueled or capable of being centrally fueled;
- Operated primarily within a metropolitan statistical area with a population of at least 250,000 according to the 1980 Census; and
- Owned, leased, operated or otherwise controlled by an entity which owns or operates 50 or more such vehicles in the United States.

Various classes of light duty motor vehicles are excluded from the basis for determining coverage. Excluded categories are listed in § 490.3 of DOE's final rule for State government fleets and certain alternative fuel providers, 10 CFR part 490, 61 FR 10654. Appendix A of subpart A of that rule (61 FR 10655) is a list of the metropolitan statistical areas with a population of at least 250,000 according to the 1980 Census.

1. *Advance notice of proposed rulemaking.* Section 507(a)(3) of the Act requires DOE to publish an advance notice of proposed rulemaking for the purposes of: (1) evaluating progress toward the goals of producing replacement fuels to replace, on an energy equivalent basis, at least 10% of motor fuels consumption by the year 2000 and at least 30% by the year 2010; (2) identifying the problems with achieving the goals; (3) assessing the adequacy and practicability of the goals; and (4) considering all actions necessary to meet the goals. Today's notice is issued to comply with this statutory requirement.

2. *Early rulemaking.* Sections 507(a)(4) and (b)(1) of the Act direct DOE, after obtaining public input on the issues raised in this notice, to publish a notice of proposed rulemaking to determine whether a fleet requirement to begin in model year 1999 is necessary to meet the 30% fuel replacement goal by 2010 and (ii) that the goal is practicable and actually achievable through implementation of a private and local fleet requirement program along with other measures. 42 U.S.C. 13257(a)(4) and (b)(1).

Subject to change by rule, section 507(a) sets forth the following tentative alternative fueled vehicle acquisition schedule for requirements established by the early rulemaking:

20 percent of the light duty motor vehicles acquired in model years 1999, 2000 and 2001;

30 percent of those acquired in model year 2002;

40 percent of those acquired in model year 2003;

50 percent of those acquired in model year 2004;

60 percent of those acquired in model year 2005; and

70 percent of those acquired in model year 2006 and thereafter.

DOE may establish, by rule, a lesser percentage for any model year or establish a later beginning date for the mandate to begin. 42 U.S.C. 13257(a)(2).

In order to determine that a mandate is ''necessary,'' section 507(b) of the Act, 42 U.S.C. 13257(b), requires DOE to make the following findings by rule:

(A) The goal of replacement fuel use described in section 502(b)(2)(B) is not expected to be actually achieved by 2010 (or such other date as is established under section 504) by voluntary means or pursuant to Title V or any other law without such a fleet requirement program, taking into consideration the status of the achievement of the interim goal described in section 502(b)(2)(A);

(B) Such goal is practicable and actually achievable within periods specified in section 502(b)(2) through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals; and

(C) By 1998 (when model year 1999 begins) or the date specified by the Secretary in a rule initiating a fleet requirement program—

(i) there exists sufficient evidence to ensure that the fuel and the needed infrastructure, including the supply and deliverability systems, will be installed and located at convenient places in the fleet areas subject to the rule and will be fully operational when the rule is effective to offer a reliable and timely supply of the applicable alternative fuel at reasonable costs (as compared to conventional fuels) to meet the fleet requirement program, as demonstrated through use of the provisions of section 505(1) of the Act regarding voluntary commitments or other adequate, reliable, and convincing forms of agreements, arrangements, or representations that such fuels and infrastructure are in existence or will exist when the rule is effective and will be expanded as the percentages increase annually;

(ii) there will be a sufficient number of new alternative fueled vehicles from original equipment manufacturers that comply with all applicable requirements of the Clean Air Act and the National Traffic and Motor Vehicle Safety Act of 1966;

(iii) such new vehicles will meet the applicable non-Federal and non-State fleet performance requirements of such fleets (including range, passenger or cargo-carrying capacity, reliability, refueling capability, vehicle mix, and economical operation and maintenance); and

(iv) establishment of a fleet requirement program by rule will not result in unfair competitive advantages or disadvantages, or result in undue economic hardship, to the affected fleets.

If DOE has not promulgated a final rule to implement an early mandate by December 15, 1996, it is precluded from doing so and must proceed to a later rulemaking (beginning no later than April 1998) to determine whether a mandate to begin in model year 2002 or thereafter is ''necessary'' under section 507(e). 42 U.S.C. 13257(b)(1)(e). DOE notes that there are several considerations warranting delay before completing a rulemaking involving the imposition of fleet AFV requirements for private and local government fleets. First, DOE has not yet completed its study of the technical and economic feasibility of meeting the goals set forth in section 502(b)(2). Second, it would be useful to observe implementation of the final rule under sections 501 and 507(o) in considering many of the issues key to possible private and local government fleet requirements. Implementation of these initial mandates was delayed from the statutory schedule by one model year and will begin in September of 1996. DOE is especially interested in Alternative State Plans which may capitalize on the Clean Cities Program and involve a substantial number of private and local fleets. Third, the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, and President Clinton's Executive Orders 12866 and 12875 require careful consultations with stakeholders and creative exploration of alternatives to regulation that could achieve the statutory objectives.

Lastly, the Department also notes that it is unlikely that the procedural requirements for this early rulemaking could be completed, as a practical matter, before December 15, 1996, the deadline for a final rule under section 507(b).

3. *Later rulemaking.* If DOE does not adopt an early mandate, section 507(e) and (g) of the Act require DOE to initiate a rulemaking to determine if the statutory conditions for a later mandate, beginning in model year 2002 or thereafter, are met. While the required determinations for the early and later rulemakings are not identical, the information gathered through this advance notice of proposed rulemaking process will be relevant and useful for making the required determinations in the later rulemaking as well.

Section 507(g) provides the following acquisition schedule for a program established by this later rulemaking:

20 percent of the light duty motor vehicles acquired in model year 2002;

40 percent of those acquired in model year 2003;

60 percent of those acquired in model year 2004; and

70 percent of those acquired in model year 2005 and thereafter.

If DOE were eventually to determine that the conditions for the late mandate under sections 507 (e) and (g) were not met, DOE would be required by section 509 of the Act to submit to Congress recommendations for possible requirements or incentives applying to fuel suppliers, vehicle suppliers and motorists that would achieve the goals.

II. General Issues Relating to Replacement Fuel Goals

As explained in Section I of this notice, section 507(a)(3) of the Act requires DOE to publish an advance notice of proposed rulemaking for the purposes of: (1) Evaluating progress toward the replacement fuel goals of producing replacement fuels to replace, on an energy equivalent basis, at least 10% of motor fuels consumption by the year 2000 and at least 30% by the year 2010; (2) identifying the problems with achieving the goals; (3) assessing the adequacy and practicability of the goals; and (4) considering all actions necessary to meet the goals.

Section 502(a) lays out a specific goal for a ''Replacement Fuel Supply and Demand Program'': to promote the development and use in light duty motor vehicles of domestic replacement fuels to substitute for imported petroleum motor fuels to the maximum extent practicable.

42 U.S.C. 13252. In designing the program, DOE is to focus on those replacement fuels having the most impact in reducing oil imports, improving the health of the Nation's economy and reducing emissions of greenhouse gases. Section 502(b)(2) further requires DOE to assess, among other things, the feasibility of producing adequate replacement fuels to displace 10% of U.S. motor fuel by 2000 and 30% by 2010. 42 U.S.C. 13252(b)(2).

DOE invites comments on the following general issues related to achieving the Act's replacement fuel goals:

1. What voluntary and incentive measures could be undertaken, either in conjunction with fleet AFV requirements or in lieu of such mandates, that would be effective in achieving progress toward the fuel replacement goals?

2. What methods or criteria should DOE use to assess the adequacy and practicality of specific replacement fuel goals (e.g., the 10% and 30% targets) or for determining whether the goals should be modified?

3. How should the potential for dramatic changes in the price and availability of petroleum (e.g., due to a sharp curtailment in world petroleum supplies) be factored into the design of a replacement fuels program?

4. How should DOE estimate the fuel replacement impacts from other federal or state alternative fueled vehicle mandates, voluntary commitments, use of dual fueled vehicles that operate only part time on alternative fuels, and other measures?

5. What factors should DOE take into account when estimating the impact of replacement fuels on reducing oil imports; improving the health of the nation's economy; and reducing greenhouse gas emissions?

III. Additional Issues Related to Fleet Mandate Determinations

DOE seeks comment on the following issues that may be relevant to any future DOE decision to propose alternative fueled vehicle acquisition requirements for local government and private fleets:

1. In assessing whether sufficient numbers of new alternative fueled vehicles complying with Clean Air Act, 42 U.S.C. 7401 *et seq.*, and National Traffic and Motor Vehicle Safety Act of 1966, 49 U.S.C. 30101 *et seq.*, requirements are available, should DOE look to anticipated or committed production volumes, number of models offered, or number of vehicle categories in which vehicles are offered? Should DOE base its assessment on the number of alternative fuel configurations in which such vehicles are offered or only to the totals for all alternative fuel configurations?

2. In determining whether alternative fuel infrastructure, including the supply and deliverability systems, will be installed and located at convenient places in the fleet areas, should DOE consider whether extended range refueling will be available, or should it only consider whether central fueling facilities will be adequate?

3. What would constitute unfair competitive advantage or disadvantage to the affected fleets? What would constitute undue economic hardship to the affected fleets?

4. DOE is required by section 507(l) to take into consideration, to the extent it has discretion to do so, the following factors: energy security, costs, safety, lead time requirements, vehicle miles traveled annually, effect on greenhouse gases, technological feasibility, energy requirements, economic impacts including impacts on fleets, workers and consumers, such as users of the alternative fuels for other purposes, and the availability of alternative fuels and alternative fueled vehicles. What bearing, if any, should these factors have on a DOE determination as to whether it is ''necessary'' under section 507 to impose alternative fueled vehicle acquisition requirements on local government and private fleets?

IV. Review and Analysis Requirements

The Office of Information and Regulatory Affairs in the Office of Management and Budget (OIRA) has determined that this rulemaking is a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this advance notice was submitted for review to OIRA. Were DOE to propose alternative fueled vehicle acquisition requirements for local government and private fleets, the rulemaking could constitute an economically significant regulatory action, and DOE would prepare and submit to OIRA for review the assessment of costs and benefits required by section 6(a)(3) of Executive Order 12866. Other procedural and analysis requirements in other Executive Orders and statutes also may apply to such future rulemaking action, including the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and the Unfunded Mandates Act of 1995, Pub. L. 104–4, and the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*

VII. Public Comment Procedures

a. Participation in Rulemaking

The Department encourages the maximum level of public participation possible in this rulemaking. Individual fleet operators, representatives of trade groups, local governments, consumers of fleet services, vehicle manufacturers, fuel providers, including producers, distributors and service station operators, associations, States or other governmental entities, and others are urged to submit written comments on the proposal. The Department also encourages interested persons to participate in the public hearings to be held at the times and places indicated at the beginning of this notice.

The DOE has established a period of 90 days following publication of this notice for persons to comment on this advance notice of proposed rulemaking. All public comments and the transcripts

of the public hearings and other docket material will be available for review in the DOE Freedom of Information Reading Room at the address shown at the beginning of this notice. The docket file material will be filed under ''EE–RM–96–200.''

b. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below.

Comments (8 copies) should be labeled both on the envelope and on the documents, ''Fleet AFV Acquisition Requirements Rulemaking (Docket No. EE–RM–96–200),'' and must be received by the date specified at the beginning of this notice. All comments and other relevant information received by the date specified at the beginning of this notice will be considered by DOE in the subsequent stages of the rulemaking process.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure should submit one complete copy of the document and 3 copies, if possible, from which the information believed to be confidential has been deleted. The Department will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

c. Public Hearings

1. *Procedure for Submitting Requests to Speak.* The dates, times and places of the public hearings are indicated at the beginning of this notice. The Department invites any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, to make a request for an opportunity to make an oral presentation at the public hearings. Such requests should be labeled both on the letter and the envelope—''Fleet AFV Acquisition Requirements Rulemaking (Docket No. EE–RM–96–200),'' should be sent to the address given at the beginning of this notice and must be received by the date specified. Alternatively, requests may be telephoned to the telephone number given. The person making the request should give a telephone number where he or she may be contacted. Persons selected to be heard will be notified by DOE as to the approximate time they will be speaking.

Each person selected to be heard is requested to submit 8 copies of his/her statement at the registration desk prior to the beginning of the hearing. In the event any person wishing to testify cannot meet this requirement, that person may make alternative arrangements by calling (202) 586–3012 in advance or by so indicating in the letter requesting to make an oral presentation.

2. *Conduct of Hearing.* The Department reserves the right to select the persons to be heard at the hearings, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation is limited to 10 minutes.

A DOE official will be designated to preside at the hearings. The hearings will not be judicial or evidentiary-type hearings, but will be conducted in accordance with 5 U.S.C. 533 and section 501 of the DOE Organization Act, 42 U.S.C. 7191. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal or clarifying statement, subject to time limitations. Any further procedural rules regarding proper conduct of the hearings will be announced by the presiding official.

Transcripts of the hearings will be made and the entire record of this rulemaking, including the transcripts, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcripts from the transcribing reporter.

Issued in Washington, DC on August 2, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–20077 Filed 8–6–96; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 109 and 110

[Notice 1996–15]

Rulemaking Petition: Democratic Senatorial Campaign Committee and Democratic Congressional Campaign Committee, Notice of Availability

AGENCY: Federal Election Commission.

ACTION: Rulemaking Petition: Notice of Availability.

SUMMARY: On July 11, 1996, the Commission received a Petition for Expedited Rulemaking from the Democratic Senatorial Campaign Committee and Democratic Congressional Campaign Committee. The petition urges the Commission to revise its regulations regarding independent expenditures by national party committees in Congressional races to conform to the Court's decision in *Colo. Repub. Fed. Camp. Comm. et al.* v. *F.E.C.* The petition is available for inspection in the Commission's Public Records Office. In addition, the Commission is publishing today a Notice of a technical amendment to conform its regulations to the Court's decision.

DATES: Statements in support of or in opposition to the petition must be filed on or before September 6, 1996.

ADDRESSES: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, N.W., Washington, D.C. 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Teresa A. Hennessy, Attorney, 999 E Street, N.W., Washington, D.C., 29463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Petitioners request that the Commission amend its regulations at 11 CFR Part 109 and 110.7 to provide for independent expenditures by national committees of a political party in connection with Congressional races. As noted in the petition, the Supreme Court recently held that ''* * * political parties are capable of making independent expenditures on behalf of their candidates for federal office and that such expenditures are not subject to the coordinated expenditure limits found in section 441a(d) of the F[ederal] E[lection] C[ampaign] A[ct].'' *See Colo. Repub. Fed. Camp. Comm. et al.* v. *F.E.C.*, 116 S.Ct. 2309, 2312–15 (1996). The petition adds that the Commission's regulations ''* * * purport to forbid national political parties * * * from making independent expenditures'' and that, as a result, these rules ''* * * are insufficient to provide meaningful guidance to Petitioners * * *'' The petition further requests that the Commission conduct a rulemaking on this issue before the next general election.

The Petition for Expedited Rulemaking is available for public inspection and copying at the Commission's Public Records Office, 999 E Street, N.W., Washington, D.C. 20463, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. Interested persons also may obtain a copy of the Petition within a few days

after the publication of this Notice by dialing the Commission's *Flashfax* service and following its instructions, at any time of the day and week. Statements in support of or in opposition to the Petition for Expedited Rulemaking must be submitted in writing by September 6, 1996.

Consideration of the merits of the petition will be deferred until the close of the comment period. If the Commission decides that the petition has merit it may begin a rulemaking proceeding. However, it is unlikely that the Commission could complete a rulemaking before the next election given the notice and comment requirements of the Administrative Procedure Act (5 USC 553(b)(B)) and the legislative review provisions of the FECA (2 USC 438(d)). Moreover, the issues presented by the petition are complex and may be affected by the litigation in *Colo. Republ. Fed. Camp. Comm. et al.* which is ongoing. The Commission notes, however, that the Petitioners have submitted an Advisory Opinion Request on similar issues, AOR 1996–30.

Dated: August 2, 1996.

John Warren McGarry,

Vice Chairman, Federal Election Commission.

[FR Doc. 96–20101 Filed 8–06–96; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–213–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model Avro 146–RJ70A, –RJ85A, and –RJ100A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model Avro 146–RJ70A, –RJ85A, and –RJ100A airplanes. This proposal would require repetitive inspections for cracking of fuselage frame 29, and repair, if necessary. This proposal is prompted by results of fatigue testing, which revealed fatigue cracking in the web and inboard flange of frame 29. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the fuselage due to fatigue cracking in frame 29.

DATES: Comments must be received by September 16, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–213–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 British Aerospace Regional Aircraft Limited, Avro International Aerospace Division, Customer Support, Woodford Aerodrome, Woodford, Cheshire SK7 1QR, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

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 95–NM–213–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. 95–NM–213–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model Avro 146–RJ70A,–RJ85A, and–RJ100A airplanes. The CAA advises that, during fatigue testing of the fuselage, cracking was discovered in the web and inboard flange of frame 29 between stringers 12 and 18 on the left and right side of the fuselage. The cracking emanated from the bolt holes in these areas. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the fuselage of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Avro International Aerospace Inspection Service Bulletin S.B. 53–131, dated March 29, 1995, which describes procedures for repetitive visual inspections of frame 29 between stringers 12 and 18 on the left and right side of the fuselage. The service bulletin also references procedures for accomplishing a modification at each affected bolt position, which would eliminate the need for the repetitive inspections when the modification is installed at the time specified in the service bulletin. (Specific procedures for this modification are described in Repair Instruction Leaflet HC536H9168.) The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the 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.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require repetitive visual inspections to detect cracking of the fuselage at frame 29. The actions would be required to be accomplished in accordance with the service bulletin described previously. All findings of cracking would be required to be repaired in accordance with a method approved by the FAA.

Additionally, the proposed AD would provide for an optional terminating action for the repetitive inspections. Terminating action would consist of modifying each affected bolt position in accordance with the service bulletin described previously, provided that the modification is accomplished no later than the applicable time specified in that service bulletin.

Cost Impact

The FAA estimates that 11 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 9 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,940, or $540 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace: Docket 95–NM–213–AD.

Applicability: Model Avro 146–RJ70A, –RJ85A, and –RJ100A airplanes; as listed in Avro International Aerospace Inspection Service Bulletin S.B. 53–131, dated March 29, 1995; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage of the airplane due to fatigue cracking in frame 29, accomplish the following:

(a) Perform a detailed visual inspection for cracking of frame 29 between stringers 12 and 18 on the left and right side of the fuselage, in accordance with Avro International Aerospace Inspection Service Bulletin S.B. 53–131, dated March 29, 1995. If the polymer coating on frame 29 prevents a detailed visual inspection, perform a surface eddy current inspection for cracking in accordance with the service bulletin. Perform the inspections at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For Model Avro 146–RJ100A airplanes on which British Aerospace Modification HCM01411A, HCM01411B, or HCM01411C has not been accomplished: Perform the inspection within 6 months after the effective date of this AD, or prior to the accumulation of 12,000 total landings, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 4,000 landings.

(2) For Model Avro 146–RJ70A and –RJ85A airplanes on which British Aerospace Modification HCM01411A or HCM01411C has not been accomplished: Perform the inspection within 6 months after the effective date of this AD, or prior to the accumulation of 24,000 total landings, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 4,000 landings.

(3) For Model Avro 146–RJ100A airplanes on which British Aerospace Modification HCM01411C has been accomplished, but on which British Aerospace Modification HCM01411A or HCM01411B has not been accomplished: Perform the inspection within 6 months after the effective date of this AD, or prior to the accumulation of 68,000 total landings, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 4,000 landings.

(b) If any cracking is found during any inspection required by paragraph (a) of this AD: Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) Accomplishment of the modification of each affected bolt position in accordance with Avro International Aerospace Inspection Service Bulletin S.B. 53–131, dated March 29, 1995, prior to the embodiment times shown in Table ''A'' of that service bulletin, constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

Note 2: Avro Repair Instruction Leaflet (RIL) HC536H9168 provides detailed instructions for modification of all bolt positions in the affected areas of frame 29.

(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. 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 3: 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 August 1, 1996.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–20073 Filed 8–6–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–68–AD]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4100 series airplanes. This proposal would require replacement of the existing decompression panel on the aft bulkhead of the toilet compartment with a modified decompression panel. This proposal is prompted by a report that a decompression panel that does not meet flammability requirements was installed on these airplanes during manufacture. The actions specified by the proposed AD are intended to prevent injury to the crew and passengers and damage to the airplane structure due to the incapability of the decompression panel to contain a fire.

DATES: Comments must be received by September 16, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–68–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 Limited, Customer Support Department, Prestwick International Airport, Ayrshire KA9 2RW, Scotland. 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) 227–1149.

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 96–NM–68–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. 96–NM–68–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4100 series airplanes. The CAA advises that a decompression panel that does not meet flammability requirements, as specified in sections 25.855 (''Cargo or baggage compartments'') and 25.857 (''Cargo compartment classification'') of the Federal Aviation Regulations (14 CFR 25.855 and 25.857), was installed on certain Model 4100 series airplanes during manufacture. This discovery was made during fire testing of a modified baggage bay bulkhead. Investigation revealed that the existing decompression panels installed on these airplanes are made of a material that is too thin to meet the test requirements for flame penetration resistance for cargo compartment liners specified in Appendix F of part 25 (''Airworthiness Standards: Transport Category Airplanes'') of the Federal Aviation Regulations (14 CFR part 25). Therefore, the panel does not fulfill the intent of the regulations, which, in part, is to assure the capability of the cargo compartment lining materials (e.g., the decompression panel) to contain a fire.

If such a decompression panel is installed on an airplane and a fire occurs in the rear baggage compartment, the fire may not be completely confined without endangering the safety of the airplane or the occupants, and hazardous quantities of noxious gases could be released into the cabin. This condition, if not corrected, could result in injury to the crew and passengers and damage to the airplane structure.

Explanation of Relevant Service Information

Jetstream has issued Service Bulletin J41–25–068, dated November 9, 1995, which describes procedures for replacement of the existing decompression panel on the aft bulkhead of the toilet compartment with a modified decompression panel. The replacement involves removal of the existing decompression panel, installation of six new magnetic catches, and installation of a modified decompression panel having a thicker panel that will assure the capability of the cargo compartment lining materials to contain a fire. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or

develop on other airplanes of the same type design, the proposed AD would require replacement of the existing decompression panel on the aft bulkhead of the toilet compartment with a modified decompression panel. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 17 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,120, or $360 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Jetstream: Docket 96–NM–68–AD.

Applicability: Model 4100 series airplanes; constructors numbers 41004 through 41017 inclusive, and 41019 through 41033 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 otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent injury to the crew and passengers and damage to the airplane structure due to the incapability of the decompression panel to contain a fire, accomplish the following:

(a) Within 60 days after the effective date of this AD, replace the existing decompression panel on the aft bulkhead of the toilet compartment with a modified decompression panel, in accordance with Jetstream Service Bulletin J41–25–068, dated November 9, 1995.

(b) As of the effective date of this AD, no person shall install a decompression panel having part number 04125106–403 on the bulkhead assembly of any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

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

Issued in Renton, Washington, on August 1, 1996.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–20074 Filed 8–6–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Parts 91,93,121, and 135

[Docket No. 28537; Notice No. 96–11]

RIN 2120–AF93

Special Flight Rules in the Vicinity of Grand Canyon National Park: Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects an administrative error in the Notice of Proposed Rulemaking (NPRM) published in the Federal Register on July 31, 1996, which proposes to amend the special flight rules in the vicinity of Grand Canyon National Park. In the July 31 NPRM, the appendix that provides a graphic depiction of the proposed airspace changes was inadvertently omitted. This action corrects that error of omission.

FOR FURTHER INFORMATION CONTACT: Neil Saunders, Airspace and Rules Division, ATA–400, Airspace Management Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: 202–267–8783.

SUPPLEMENTARY INFORMATION:

Background

Federal Register document 96–19489, published on July 31, 1996 (Notice Number 96–11; 61 FR 40120), proposes to amend the special flight rules in the vicinity of Grand Canyon National Park. In the July 31 NPRM, the appendix that provides a graphic depiction of the proposed airspace changes was inadvertently omitted. This action corrects that error of omission.

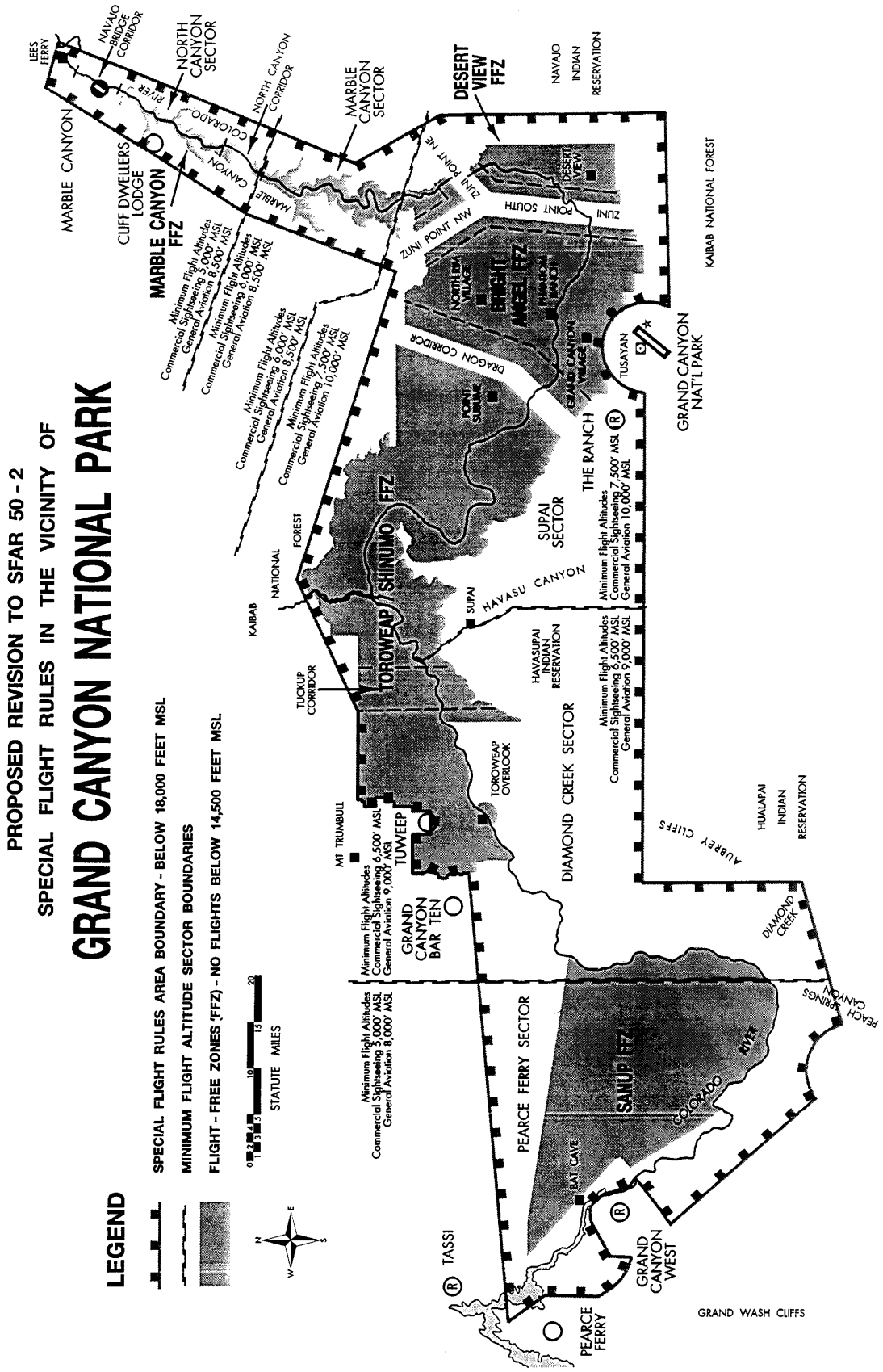
Correction of Publication

Accordingly, pursuant to the authority delegated to me, the Appendix to the Special Flight Rules in the Vicinity of Grand Canyon National Park (Federal Register document 96–19489; 61 FR 40120) is corrected as follows:

Appendix—Special Flight Rules in the Vicinity of Grand Canyon National Park [Corrected]

On page 40139, column three, following the appendix heading, add a graphic depiction to read as follows:

BILLING CODE 4910–13–M


PROPOSED REVISION TO SFAR 50 - 2
SPECIAL FLIGHT RULES IN THE VICINITY OF
GRAND CANYON NATIONAL PARK
LEGEND
SPECIAL FLIGHT RULES AREA BOUNDARY - BELOW 18,000 FEET MSL
MINIMUM FLIGHT ALTITUDE SECTOR BOUNDARIES
FLIGHT - FREE ZONES (FFZ) - NO FLIGHTS BELOW 14,500 FEET MSL
STATUTE MILES
LEES FERRY
NAVAJO BRIDGE CORRIDOR
NORTH CANYON SECTOR
NORTH CANYON CORRIDOR
MARBLE CANYON SECTOR
DESERT VIEW FFZ
NAVAJO INDIAN RESERVATION
MARBLE CANYON
CLIFF DWELLERS LODGE
MARBLE CANYON FFZ
COLORADO RIVER
MARBLE CANYON
ZUNI POINT NE
ZUNI POINT NW
ZUNI POINT SOUTH
DESERT VIEW
KAIBAB NATIONAL FOREST
Minimum Flight Altitudes
Commercial Sightseeing 5,000' MSL
General Aviation 8,500' MSL
Minimum Flight Altitudes
Commercial Sightseeing 6,000' MSL
General Aviation 8,500' MSL
Minimum Flight Altitudes
Commercial Sightseeing 6,000' MSL
General Aviation 8,500' MSL
Minimum Flight Altitudes
Commercial Sightseeing 7,500' MSL
General Aviation 10,000' MSL
NORTHERN VILLAGE
BRIGHT ANGEL FFZ
PHANTOM RANCH
DRAGON CORRIDOR
GRAND CANYON VILLAGE
TUSAYAN
GRAND CANYON NAT'L PARK
POINT SUBLIME
THE RANCH
SUPAI SECTOR
KAIBAB NATIONAL FOREST
TOROWEAP/SHINUMO FFZ
SUPAI
HAVASU CANYON
HAVASUPAI INDIAN RESERVATION
TUCKUP CORRIDOR
TOROWEAP OVERLOOK
DIAMOND CREEK SECTOR
AUBREY CLIFFS
HUALAPAI INDIAN RESERVATION
MT TRUMBULL
TUWEEP
GRAND CANYON BAR TEN
DIAMOND CREEK
PEACH SPRINGS CANYON
PEARCE FERRY SECTOR
SANUP FFZ
COLORADO RIVER
BAT CAVE
TASSI
GRAND CANYON WEST
PEARCE FERRY
GRAND WASH CLIFFS

Issued in Washington on August 1, 1996.

Jeff Griffith,

Program Director for Air Traffic Airspace Management.

[FR Doc. 96–20153 Filed 8–6–96; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1507

Proposed Rule: Fireworks Devices; Fuse Burn Time

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its regulation under the Federal Hazardous Substances Act that applies to the fuse burn times of fireworks devices. The proposal would change the allowable fuse burn times from the presently required range of 3 to 6 seconds to the range of 3 to 9 seconds. Increasing the range will allow manufacturers to more consistently produce fireworks that do not fall below a 3-second burn time, thus reducing hazardous short burn times. Further, the increase in fuse burn time to 9 seconds will not create any additional risk of injury to consumers. Therefore, the amendment should increase the safety of users of fireworks. The amendment was requested in a petition from the American Fireworks Standards Laboratory.

DATES: Comments on the proposal should be submitted no later than October 21, 1996.

ADDRESSES: Comments to the Commission on the proposed rule should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 502, 4330 East-West Highway, Bethesda, Maryland 20814–4408, telephone (301) 504–0800. Comments also may be filed with the Commission by facsimile to (301) 504–0127, or by electronic mail via info@cpsc.gov. Comments should include a caption or cover indicating that they are directed to the Office of the Secretary and are comments on the proposed revisions to the fuse burn time of fireworks.

Comments on potential changes to the Commission staff's current enforcement policy for fuse burn times, and on possible interim forbearance of enforcement against fuse burn times of up to 9 seconds, should be mailed to David Schmeltzer, Assistant Executive Director for Compliance, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Carolyn Meiers, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0468 ext. 1281; or e-mail to cpsc/g=Carolyn/i=K./s=Meiers/o=cpsc@mhs.attmail.com

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Introduction. In this notice, the Consumer Product Safety Commission (''the Commission'' or ''CPSC'') proposes to amend its regulation under the Federal Hazardous Substances Act (''FHSA'') that governs the allowable range of times that fuses for fireworks may burn before the device ignites. 16 CFR 1507.3(a)(2). The Commission seeks comments from interested members of the public on the proposed amendment. The Commission also invites comments from counterpart agencies in foreign governments, foreign standards developers, and others who might be interested in this proposed amendment. This invitation is in addition to the routine international notification of this proposed rule that is provided by the World Trade Organization Agreement on Technical Barriers to Trade.

Background. Commission regulations under the FHSA require fireworks devices (other than firecrackers) [1] to have a fuse which will burn at least 3 seconds but not more than 6 seconds before the device ignites. 16 CFR 1507.3(a)(2).[2] In 1991, the American Pyrotechnics Association (''APA''), a trade association representing the fireworks industry, submitted a petition to the Commission to modify the fuse burn time regulation. APA requested that the upper limit of the allowable fuse burn time be raised to 9 seconds.

The 1991 petition was denied because at that time there were insufficient human factors data to demonstrate that a person would not return to a fireworks device within the requested 9-second allowable fuse burn time. The Commission was concerned that a longer fuse burn time might result in an increase of injuries to consumers who returned to live fireworks assuming they were ''duds.''

After the APA's petition was denied, the American Fireworks Standards Laboratory (''AFSL''), an industry-supported fireworks standards and certification organization, contracted with the American Institutes of Research (''AIR'') to conduct human factors research of fireworks-related behavior. The objective of the study was to determine if consumers would return to a fireworks device within 9 seconds after lighting the fuse.

In September 1995, the CPSC was petitioned by AFSL (Petition HP 96–1) to make the same modification to the regulation under the FHSA that governs fireworks fuse burn time as did the previous petition from APA—that the upper limit of the allowable range of fuse burn times be changed from 6 to 9 seconds.

Manufacturers currently target a 4.5 second average fuse burn time, which is the midpoint of the currently allowed 3 to 6 seconds range. By raising the upper limit of the fuse burn time from 6 to 9 seconds, AFSL contends that manufacturers could target a more ideal average fuse burn time of 6 seconds. AFSL claims this would enhance consumer safety by eliminating incidents of fuses burning less than 3 seconds.

AFSL states that increasing the upper range of the fuse burn time to 9 seconds also will increase compliance with the 3 second requirement because: (1) It will improve fuse design and quality, (2) it will make fuse burn time performance more consistent, and (3) it will allow for the variability in fuse burn time caused by environmental conditions. Any such improvement in compliance with the 3-second fuse burn time requirement would likely increase safety.

After considering the available information, the Commission voted to grant Petition HP 96–1. The available information and the reasons for the Commission's decision are explained below.

II. Statutory Procedure

This proceeding is conducted under the FHSA. 15 U.S.C. 1261–1278. Fireworks are ''hazardous substances'' within the meaning of section 2(f)(1)(A) of the FHSA because they are flammable or combustible substances, or generate pressure through decomposition, heat, or other means, and ''may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use * * *.'' 15 U.S.C. 1261(f)(1)(A).

Under section 2(q)(1)(B) of the FHSA, the Commission may classify as a ''banned hazardous substance'' any

[1] 16 CFR 1507.1.

[2] As a matter of enforcement policy, the Commission's staff has not brought legal actions against fuse burn time violations as low as 2 seconds and as high as 8 seconds for all fireworks except reloadable shell devices, bottle rockets, and jumping jacks which exhibit erratic flight.

hazardous substance intended for household use which, notwithstanding the precautionary labeling that is or may be required by the FHSA, presents such a hazard that keeping the substance out of interstate commerce is the only adequate way to protect the public health and safety. Id. at 1261(q)(1)(B). The current fuse burn time requirement was issued under that section.

A proceeding to amend a rule issued under section 2(q)(1)(B) of the FHSA is subject to the provisions of section 701(e) of the Federal Food, Drug, and Cosmetic Act (''section 701(e)''), 21 U.S.C. 371(e). 15 U.S.C. 1261(2)(q)(2). Under section 701(e), if the petition of an interested person shows ''reasonable grounds'' for the action requested, the Commission is required to begin a rulemaking. The fireworks types that would be subject to the proposed amendment, and that have fuse burn times outside the proposed 3 to 9 second range, are already banned hazardous substances. Because the amendment proposed below will not declare any additional products to be banned hazardous substances, an advance notice of proposed rulemaking is not required for this proceeding. See FHSA Sec. 3(f), 15 U.S.C. 1262(f). For the same reason, the procedures required by sections 3(g)–(i) of the FHSA do not apply to this proceeding.

Under section 701(e) of the FDCA, once the Commission issues a final rule in this type of proceeding, persons who would be adversely affected by the rule may file objections with the Commission, stating the grounds therefor, and request a public hearing on those objections. 21 U.S.C. 371(e). If material objections were filed, an adjudicatory hearing to receive evidence concerning the objections would be held before an administrative law judge (''ALJ''). After the ALJ's decision, further appeals could be made to the Commission and ultimately to the courts. 21 U.S.C. 371(e)–(f).

III. Injury Data

The CPSC conducted a special study of firework injuries from June 23 through July 23, 1995. The Special Study focused on this time period because of the highly seasonal nature of fireworks injuries. The injury cases in the special study were identified through the National Electronic Injury Surveillance System (''NEISS''), CPSC's database of cases from a sample of hospital emergency rooms.

Only six sample cases potentially relevant to fuse burn times were identified. The reports of these injuries do not provide quantitative measures of fuse burn times. Characterizations of whether the time interval before a device ignites is long or short depend upon the victims' or onlookers' subjective perceptions. It could not be determined how the respondents' perceptions related to the CPSC's fuse burn time standard.

Because of the small number of sample cases and the subjectiveness of the respondents' perceptions of time, a national estimate of the injuries associated with long or short fuse burn times cannot be projected.

IV. Safety Effects of Raising the Upper Burn Time Limit to 9 Seconds

As described in greater detail below, the number of occurrences of short fuse burn times—those below 3 seconds—would likely decline appreciably if the proposed fuse burn time range of 3 to 9 seconds is adopted. This clearly would have a positive effect on the safety of the users of the fireworks subject to the fuse burn time regulation.

In the past, the Commission had been concerned that a 9-second fuse burn time could cause consumers to mistakenly believe that a fireworks device was a dud. More specifically, the concern was that a longer fuse burn time could increase the risk of injury if consumers returned to the firework before it ignited. To address this concern, AFSL contracted with AIR to conduct a human factors study to determine how long fireworks users take to begin to return to a firework that has not gone off.

This AIR study appears to present the only data currently available that relate user approach behavior to the fuse burn time of firework devices. The study found that only one of the 30 participants began to approach the device within 9 seconds. The remainder of the participants began to approach the devices from 9 seconds to 5 minutes after igniting the fuse. The median approach time for participants in the last of four trials was 19 seconds. The study concluded that an estimated 95% of the participants would not begin to approach the unexploded firework until after 9 seconds.

In the AFSL study, no participant actually reached the location of the firework device within 9 seconds. The only participant who began to approach the fireworks device before 9 seconds began the approach at 8 seconds. However, he did not actually reach the firework until approximately 35 seconds after lighting the fuse. The 19-second median approach time is approximately twice as long as the proposed 9-second upper limit. These data indicate that consumers are not likely to return to a fireworks device within 9 seconds of fuse ignition. The study also indicated that consumers are likely to use smoke and noise cues emitted by a fireworks device as a guide to when a device can be safely approached.

Based on this study, the Commission's Human Factors staff does not expect an increase in injuries associated with increasing the maximum fuse burning time to 9 seconds. The Commission preliminarily concludes that increasing the range of fuse burn times from 3 to 6 seconds to 3 to 9 seconds will reduce injuries caused by fireworks with short fuse burn times and will not create any additional hazard associated with long fuse burn times.

V. Compliance with the Current Regulation

The Commission's Office of Compliance, Division of Regulatory Management, conducts an ongoing fireworks surveillance program to identify fireworks that do not comply with the Commission's regulations. Results of this program for fiscal years 1990 through 1995 show that fuse burn time violations exceeded any other type of fireworks violation. For this time period, between 40 and 50 percent of all fireworks violations were attributed to fuse burn time.

Surveillance data may not represent all firework devices, because devices tested for compliance to regulations are not randomly selected. In addition, the number of violations leading to legal action has been affected from year to year by variations in the staff's enforcement policies.

As part of the CPSC's fireworks compliance testing program, the Commission's Directorate for Laboratory Sciences recorded more than 26,700 individual fuse burn times from tests during the period FY 1990 through FY 1995. These fuse burn times excluded firecrackers, since they are not covered by this regulation, and Roman candles, since they are subject to a different enforcement policy.

Comparisons of fuse burn times measured over these years suggest an overall improvement in fuse performance. Short fuse burn times (less than 3 seconds) decreased from about 13 percent of the fireworks tested to 8 percent. Long fuse burn times (greater than 6 seconds) decreased from about 10 percent of the fireworks tested to about 5 percent. Based on these test data, the staff estimates that the compliance rate for fuses could reach about 98 percent if the proposed changes to the fuse burn

time regulation are enacted.[3] Short fuse burn times violations could drop to less than 1 percent, while fuse burn times greater than 9 seconds could be expected to be about 1 percent.

VI. Effective Date

Increasing the allowable fuse burn times from the range of 3 to 6 seconds to a range of 3 to 9 seconds will not have any adverse effects on manufacturers, since it will simply provide a wider range of allowable times. Thus, the Commission would like to make the amendment effective as soon as possible. Under 21 U.S.C. 371(e), 30 days is allowed after the final rule is issued to receive any objections to the rule. This section also provides that the final rule may not become effective before the 30-day period for objections expires. Therefore, the Commission proposes to make the amendment effective 31 days after the final rule is published in the Federal Register.

If the Commission votes to issue the proposed amendment as a final rule, the Commission's staff intends to change its policy of not enforcing against fuse burn time violations as low as 2 seconds that now applies to all fireworks except reloadable shell devices, bottle rockets, and jumping jacks which exhibit erratic flight. After the change in policy, the staff would strictly enforce the 3-second fuse burn time for all fireworks, since there will no longer be any valid reason why industry cannot comply with the 3-second lower burn time. The current policy will continue with respect to fuse burn times of 2 to 3 seconds, however, for a time after the effective date that is sufficient to minimize any adverse economic effects on manufacturers. Comments on how long the enforcement policy allowing 2–3 second fuse burn times should continue after the effective date should be sent to David Schmeltzer, Assistant Executive Director for Compliance, Consumer Product Safety Commission, Washington, DC 20207.

In addition, the Commission's staff is considering an interim policy of allowing fuse burn times between 6 and 9 seconds. This interim policy could be instituted after the end of the comment period on this proposal and before the rule is effective. Since increasing the allowable upper limit of fuse burn time to 9 seconds is expected to increase consumer safety, this interim relief appears to be in the public interest. Persons wishing to comment on the staff's plans to provide this interim relief should send their comments to David Schmeltzer, Assistant Executive Director for Compliance, Consumer Product Safety Commission, Washington, DC 20207.

VII. Initial Regulatory Flexibility Analysis

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., generally requires the agency to prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities.

The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations.[4]

Based on information from the U.S. Department of Commerce and industry sources, the estimated value of imported shipments of consumer fireworks is about $70 to $100 million annually. Practically all of the imports are from China.

Most U.S. firms that import, distribute, or manufacture fireworks for consumer use are small, and the proposed rule is not expected to result in any adverse impact. This is because the change to a longer fuse, which should increase production costs by only about one percent, will generate savings as a result of fewer rejections of fireworks due to fuse burn time violations. Based on information from a trade association and CPSC's Office of Compliance, an estimated 40 to 50 percent of the rejections of fireworks as a result of private and CPSC testing are due to fuse burn time violations. The savings from the reduced violations, according to a representative of an industry trade association, could reach approximately $20 million annually. This may result in lower prices to the consumer.

Any necessary adjustments to the manufacturing process will take approximately 1 week to accomplish once notification is received, according to the industry. Since fireworks which comply with the current 3 to 6 second fuse burn time requirement would automatically comply with the proposed 3 to 9 second fuse burn time requirement (and because the existing enforcement policy will be continued for a reasonable period of time), there will be no economic impact resulting from the proposed 31-day effective date.

VIII. Environmental Impact

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed amendment to the fuse burn times of fireworks.

The Commission's regulations at 16 CFR 1021.5(c)(1) and (2) state that safety standards for consumer products normally have little or no potential for affecting the human environment. Since the acceptable range of fuse burn times will increase from 3–6 seconds to 3–9 seconds, the change will not cause any increase in noncomplying fireworks, which would require disposal. Therefore, no significant environmental effects are expected from the proposed rule if it is adopted. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

IX. Conclusions

For the reasons given above, the Commission preliminarily concludes that raising the upper limit of the fuse burn time range from 6 seconds to 9 seconds will reduce injuries caused by short fuse burn times. Further, the Commission believes that raising the upper limit of the fuse burn time range by 3 seconds will not cause additional injuries from long fuse burn times.

In addition, the Commission believes that the risk associated with short fuse burn times is of more concern than any risk associated with long fuse burn times. With a long fuse burn time, consumers have some cues (absence of smoke and noise) to guide them as to when to approach a device; they have time to make decisions before they react. However, consumers have no cues to alert them that a fireworks device may have a short fuse burn time. The consequences of short fuse burn times can be immediate. Consumers may have no time to retreat to a safe distance or to take safety precautions.

List of Subjects in 16 CFR Part 1507

Consumer protection, Explosives, Fireworks.

For the reasons set out in the preamble, title 16, chapter II, part 1507,

[3] These calculations assume that no changes would be made to fuse design or quality (except for a longer fuse) and that manufacturers would target a fuse burn time of 6 seconds.

[4] The Regulatory Flexibility Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

of the Code of Federal Regulations is proposed to be amended as follows.

PART 1507—FIREWORKS DEVICES

1. The authority citation for part 1507 is revised to read as follows:

Authority: 15 U.S.C. 1261–1262, 2079(d); 21 U.S.C. 371(e).

§ 1507.3 [Amended]

2. In section 1507.3(a)(2), remove the words ''6 seconds'' and add, in their place, the words ''9 seconds''.

Dated: August 2, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–20150 Filed 8–6–96; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. RM96–14–000]

Secondary Market Transactions on Interstate Natural Gas Pipelines

July 31, 1996.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is issuing a notice of proposed rulemaking to revise section 284.243 of the Commission's regulations to improve the efficiency of the Commission's capacity release mechanism and encourage greater use of this mechanism. The Commission is proposing to: make changes in its regulations and policies to improve the operation of the capacity release mechanism; eliminate the prior requirement for competitive bidding; and permit shippers to release capacity, and pipelines to sell interruptible and short-term firm service, at rates above the rate cap when the shipper or pipeline has demonstrated that it does not exercise market power.

DATES: Comments on the proposed rule are due October 7, 1996. Comments should be filed with the Office of the Secretary and should refer to Docket No. RM96–14–000.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426.

FOR FURTHER INFORMATION CONTACT: Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 208–2294.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS indefinitely in ASCII and WordPerfect 5.1 format for one year. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 2A, 888 First Street, N.E., Washington D.C. 20426.

The Commission's bulletin board system also can be accessed through the FedWorld system directly by modem or through the Internet. To access the FedWorld system by modem:

- Dial (703) 321–3339 and logon to the FedWorld system.
- After logging on, type: /go FERC

To access the FedWorld system, through the Internet:

- Telnet to: fedworld.gov
- Select the option: [1] FedWorld
- Logon to the FedWorld system
- Type: /go FERC

Or:

- Point your Web Browser to: http://www.fedworld.gov
- Scroll down the page to select FedWorld Telnet Site
- Select the option: [1] FedWorld
- Logon to the FedWorld system
- Type: /go FERC

The Federal Energy Regulatory Commission (Commission) requires interstate natural gas pipelines to provide a mechanism that permits firm shippers to release unneeded capacity to other shippers needing that capacity. The Commission is proposing to revise its capacity release regulations, § 284.243, to improve the efficiency of the program and encourage greater use of capacity release. The Commission is proposing changes in three areas. First, the Commission is proposing to require pipelines to improve their existing capacity release procedures to make the system work more efficiently. Second, the Commission is proposing to improve the speed and certainty of transactions by removing the requirement for competitive bidding. Third, the Commission proposes to permit releases of capacity and pipeline sales of interruptible and short-term firm capacity at rates above the pipeline's maximum rate upon a showing that the releasing shipper or the pipeline cannot exercise market power.

I. Public Reporting Burden

The proposed rule would affect two existing Commission data collections, FERC–545, Gas Pipeline Rates: Rate Change (Non-formal), (OMB Control No. 1902–0154) (FERC–545), and FERC–549B, Gas Pipeline Rates: Capacity Release Information (OMB Control No. 1902–0169)(FERC–549B).

Under the existing data collection/requirements of FERC–545, there would be a one-time estimated annual reporting burden of 4,125 hours (55 hours per company) with the adoption of the revised regulations proposed herein. A one-time tariff filing would adjust certain general terms and condition language in pipeline tariffs to reflect the implementation of the proposed changes in the Commission's capacity release program. Tariff filings would be required of approximately 75 interstate natural gas pipelines. (See FERC–545 burden detail in estimated burden table below.)

Under existing data collection FERC–549B there would be a reduction in annual burden of an estimated 115,650 hours (1,542 hours per company). The estimated burden reduction reflects the proposed improvements to the way the capacity release program operates and the elimination of competitive bidding requirements.

The revised regulations proposed in the subject NOPR are being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995, (44 U.S.C. 3507(d)). For copies of the OMB submission, contact Michael Miller at (202)208–1415. Interested persons may send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reductions of burden, to the Desk Officer FERC, Office of Management and Budget, Room 3019 NEOB, Washington, D.C. 20503, phone 202–395–3087 or via the Internet at hillier—t@a1.eop.gov.

Comments should be filed with the Office of Management and Budget. A copy of any comments filed with the Office of Management and Budget also should be sent to the following address at the Commission: Federal Energy Regulatory Commission, Information Services Division, Room 41–17, Washington, DC 20426, Attention: Michael Miller.

ESTIMATED ANNUAL BURDEN ASSOCIATED WITH THE SUBJECT NOPR

Affected data collection/requirement	No. of respondents	Total No. of responses	Hours per response	Total annual hours
FERC–549B (1902–0169):				
Reporting/Data Requirement Burden	75	75	–1,542	–115,650
FERC–545 (1902–0154):				
Reporting/Data Requirement Burden	75	75	55	4,125
Total Annual Hours Net Increase or (Decrease) in Burden	75	75	–1,487	–111,525

The above estimates include time for reviewing the requirements of the Commission's proposed regulations, searching existing data sources, gathering and maintaining the necessary data, and reviewing and completing the collection of information.

Data Collection/Requirement Costs

The Commission expects that the proposed changes in its regulations would result in a net reduction in day-to-day operating costs. The one-time tariff filing burden/cost under FERC–545 would be more than offset by the expected burden/cost reduction and efficiencies created under FERC–549B. The Commission estimates that the changes in reporting requirements proposed herein would result in an overall net reduction in the average annualized cost per respondent for the first year. Following the first year, a permanent annual reduction in burden/cost would occur under the FERC–549B data collection as indicated below.

Estimated annualized costs (per respondent)	
FERC–549B (Annual Reduction)	–$75,378
FERC–545 (One-time Initial Cost/First Year)	2,652
Net Total Cost (Net Reduction)	–$73,726

Internal Review:

The Commission has reviewed the proposed revisions to its regulations and determined that the changes are necessary to establish more efficient pipeline operations. The proposed rule would encourage buyers to use the capacity release system more often and make it more competitive with other means of acquiring capacity.

The proposed revisions are consistent with the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is reasonable and objective support for the burden estimates associated with the proposed changes in information requirements.

The Commission emphasizes that the increased cost under FERC–545 would be a one-time cost that pipelines would not incur on an ongoing year-to-year basis. The estimated cost reflects the one-time tariff filings to incorporate the revised regulations proposed herein. These revisions appear necessary to improve the efficiency of the capacity release program between shippers and pipelines, efficiency which, in the long run, should reduce the costs of all participants in the market.

II. Current Capacity Release Rules

The Commission instituted the capacity release mechanism to create a uniform, national program for the reallocation of interstate pipeline capacity to complement the unbundled, open access environment created by Order No. 636. [1] The capacity release mechanism enables firm shippers to make the most efficient and economical use of the capacity for which they pay as well as providing shippers that previously had been unable to acquire firm pipeline capacity (i.e., non-local distribution company shippers) with access to firm capacity. By permitting market forces to reallocate capacity to those who place a higher value on the capacity than the original holder, the capacity release mechanism increases economic efficiency as well as promoting the most efficient use of the natural gas transportation network.[2]

The Commission's authority to establish a uniform, national program governing the reallocation of interstate capacity has just been affirmed by the United States Court of Appeals for the District of Columbia in *United Distribution Co.* v. *FERC* (UDC).[3] The Court also affirmed the Commission's jurisdiction over, and authority to prevent, other capacity reallocations that may interfere with the establishment of the uniform federal program, such as buy-sell transactions in which an LDC uses its interstate capacity to transport gas on behalf of a purchaser. The Court found that the Commission's jurisdiction over a buy-sell derives from the transportation component of the transaction; the reallocation of interstate pipeline capacity to the purchaser is a ''central element'' of such transactions.[4]

Under the Commission's capacity release program, a firm shipper (releasing shipper) sells its capacity by returning its capacity to the pipeline for reassignment to the buyer (replacement shipper). The pipeline contracts with, and receives payment from, the replacement shipper and then issues a credit to the releasing shipper. The replacement shipper may pay less than the pipeline's maximum tariff rate, but

[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats. & Regs. Preambles [January 1991–June 1996] ¶ 30,939 (Apr. 8, 1992), *order on reh'g,* Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Preambles [January 1991–June 1996] ¶ 30,950 (Aug. 3, 1992), *order on reh'g,* Order No. 636–B, 57 FR 57911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992), *aff'd in part and remanded in part, United Distribution Co.* v. *FERC,* No. 92–1485 (D.C. Cir. July 16, 1996).

[2] As part of its restructuring of the electric industry, the Commission has also provided for transmission capacity reassignment for electric utilities. *See* Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. Preambles [January 1991–June 1996], ¶ 31,036, at 31,694 (Apr. 24, 1996).

[3] No. 92–1485, 1996 U.S. App. Lexis 17436, slip op. at 63–81 (D.C. Cir. July 16, 1996).

[4] *Id.,* at 80. The Commission also has Natural Gas Act jurisdiction over buy-sells and other transactions to the extent they constitute the sale of natural gas for resale. *See id.,* at 68.

not more. The results of all releases are posted by the pipeline on its Electronic Bulletin Board (EBB) and made available through standardized, downloadable files.

The releasing shipper can locate a replacement shipper in two ways. The releasing shipper can choose to have the pipeline post the notice of release so other shippers can submit bids for that capacity, with the capacity awarded to the highest bidder. Or, the releasing shipper can enter into a pre-arranged transaction with a replacement shipper for the release of capacity.

The regulations establish a number of requirements for pre-arranged releases. For pre-arranged releases at less than the maximum rate, the regulations generally require that the pipeline post the release and permit other shippers to bid for that capacity. If a competitive bid exceeds the pre-arranged release rate, the designated replacement shipper is given the opportunity to match that bid and thus retain the capacity.

The Commission, however, has recognized that, for short-term transactions, shippers need the ability to reallocate capacity quickly and efficiently. The original regulations, therefore, provided an exemption from the competitive bidding requirements for transactions of less than one calendar month. This exception has been extended to transactions of 31 days or less. To ensure that parties cannot use the exception to avoid bidding for longer-term transactions, the regulations prohibit parties from rolling-over or granting extensions to 31-day-or-less transactions unless they comply with the requirements for prior notice and bidding.

Since Order No. 636, the Commission, on several occasions, has fine tuned the mechanics of the capacity release procedure. In February 1993, the Commission convened a technical conference to examine methods of creating standardized downloadable files for capacity information, so that shippers and third-party service providers could obtain capacity information without having to deal with the eccentricities of the individual pipeline EBBs. The industry formed Working Groups to devise the necessary standards, and, in Order No. 563, the Commission adopted into its regulations the standards recommended by a consensus of the industry.[5]

The Commission also began receiving requests from local distribution companies (LDCs) to revise the capacity release regulations by removing the requirements for competitive bidding and the cap on the rate releasing shippers could receive for capacity.[6] After the capacity release program had been in effect for a year, the Commission began a review of the program which involved informal meetings between staff and representatives from all segments of the industry.

During these meetings, all industry segments recommended that the less-than-one calendar month exception from the bidding requirements be extended to a full month to conform the bidding exception to the industry's monthly purchasing schedule. The Commission adopted the industry's recommendation in Order No. 577 and extended the bidding exception to 31 days.[7] The extension of the bidding exception ensures that releasing and replacement shippers can consummate monthly transactions quickly and provides replacement shippers with the needed assurance that they will obtain the contracted-for capacity at the negotiated price.

The Commission also improved the capacity release system as part of its recent standardization of pipeline business and communication practices. On July 17, 1996, the Commission issued a final rule incorporating by reference business practice and communication standards proposed by the Gas Industry Standards Board (GISB).[8] These standards will be implemented by pipelines in the spring of 1997.

The standards require changes in pipelines' capacity release procedures and in their methods of communicating capacity release information. An important procedural change is the establishment of a capacity release timeline.[9] This timeline provides that, if pipelines are notified of a non-biddable capacity release transaction by 9:00 a.m. the day of nomination, the replacement shipper can nominate the same day (at 11:30 a.m.). For biddable transactions (of less than five months), the timeline provides that if a pre-arranged transaction (or a shipper's offer soliciting bids) is posted to the pipeline by 1:00 p.m., the pipeline must complete the bidding and matching process by 5:00 p.m., and the replacement shipper can nominate the next day.[10]

The communication standards require pipelines to process file uploads of pre-arranged transactions. This change complements the file downloads previously required by Order No. 563, because shippers and third-party service providers now will be able to transmit pre-arranged deals to the pipelines without being burdened by the inconsistent and irregular procedures of individual pipeline EBBs. Instead, they will be able to efficiently transmit this information to every pipeline using the same file formats and protocols.

Proposed Revisions

The Commission proposes revisions to § 284.243 to further improve the efficiency of the capacity release mechanism and thereby create an even more robust secondary market. The revisions are intended to encourage greater use of capacity release and make capacity release more competitive with other means of acquiring capacity, such as the pipelines' interruptible and short-term firm services as well as the so-called ''gray market.'' The gray market generally refers to LDCs' use of their firm transportation capacity to make targeted bundled transportation/gas sales to specific purchasers either on-system or off-system.

Specifically, as discussed below, the Commission proposes three major revisions to its capacity release regulations and policies. First, the Commission is proposing to revise its regulations as well as change policies to improve the operation of the capacity release program. Second, the Commission proposes to eliminate the competitive bidding requirement. Third, the Commission proposes to permit shippers to release capacity, and pipelines to sell interruptible and short-term firm service, at rates above the rate

[5] Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), FERC Stats. & Regs. Preambles [January 1991–June 1996] ¶ 30,988 (Dec. 23, 1993), *order on reh'g*, Order No. 563–A, 59 FR 23624 (May 6, 1994), FERC Stats. & Regs. Preambles [January 1991–June 1996] ¶ 30,994 (May 2, 1994), *reh'g denied*, Order No. 563–B, 68 FERC ¶ 61,002 (1994).

[6] *See* Petition Of United Distribution Companies and Associated Gas Distributors For A Rulemaking To Promote Growth And Development Of The Secondary Market, Docket No. RM94–10–000, filed December 9, 1993.

[7] Release of Firm Capacity on Interstate Natural Gas Pipelines, Order No. 577, 60 FR 16979 (Apr. 4, 1995), FERC Stats. & Regs. Preambles [January 1991–June 1996] ¶ 31,017 (Mar. 29, 1993), *reh'g granted*, Order No. 577–A, 60 FR 27882 (June 8, 1995), FERC Stats. & Regs. Preambles [January 1991–June 1996] ¶ 31,021 (May 31, 1995).

[8] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587, 76 FERC ¶ 61,042 (1996). GISB is a consensus standards organization open to all members of the gas industry. Under GISB procedures, standards must be approved by a consensus of the five segments of the industry—pipelines, LDCs, producers, end-users, and services (including marketers and third-party computer service providers).

[9] Capacity Release Standard 5.3.2. All times used in the standards are central clock time (which is central standard time, without a daylight savings time adjustment).

[10] Longer-term transactions, those of five months or longer, have a 4-day bidding period.

cap when the shipper or pipeline has demonstrated that it does not exercise market power. In addition, the Commission is revising its regulations to reflect the long-standing policy that pipelines must permit permanent releases of capacity—releases where the replacement shipper takes over the remaining term of the releasing shipper's contract, and the releasing shipper is relieved of its obligations under its pipeline contract.[11]

A. Improvements to the Mechanism

1. Comparability Between Released Capacity and Pipeline Short-Term Services

The Commission proposes to add a requirement in its regulations requiring pipelines to treat all short-term transportation—capacity release, interruptible, and short-term firm—in a comparable manner. This proposal ensures that the pipeline procedures are not inherently biased in favor of pipeline services, so that capacity release can compete on an even basis.

The recently adopted GISB standards go a long way towards achieving such comparability. Interruptible shippers can submit a nomination under their interruptible contract on the day they determine they need service. While not identical, the GISB capacity release standards permit replacement shippers (with pre-arranged transactions not subject to bidding) to nominate the same day the pipeline is notified of the capacity release transaction. If shippers submit a pre-arranged non-biddable transaction to the pipeline by 9:00 a.m., the pipeline will complete the contracting process by 10:00 a.m., thereby enabling the replacement shipper to nominate by the 11:30 a.m. nomination deadline.[12]

The Commission requests comment on whether the GISB standard should be deemed sufficient to satisfy the proposed comparability requirement. While non-biddable capacity releases must be posted to the pipeline 2½ hours prior to notification, interruptible shippers have no pre-nomination notice requirement; they can simply submit a nomination at the 11:30 a.m. nomination deadline. Comments should discuss whether the 2½ hour time differential between capacity release and interruptible nominations is of competitive significance.

The comments also should address methods for making the capacity release procedures parallel even more closely the procedures used by the pipelines for interruptible service. For example, interruptible shippers are pre-approved for creditworthiness and have master contracts that enable them to submit nominations without any further procedures. Similarly, pipelines could pre-approve replacement shippers for creditworthiness and execute a master contract with all pre-approved shippers. Once pre-approved, a replacement shipper, like an interruptible shipper, could nominate pursuant to a capacity release transaction so long as the pipeline is notified of the transaction anytime prior to the nomination deadline.

In addition, for replacement shippers that have not been pre-approved, the Commission could relax the policy, adopted in Order No. 636, that releasing shippers can never be liable for usage charges and penalties incurred by replacement shippers.[13] The Commission's rationale for the policy was that such charges are unrelated to the reservation of capacity and primarily are designed to recover the variable costs of replacement shippers' use of the pipeline or to deter replacement shippers from engaging in prohibited conduct. Since the releasing shipper has no control over the conduct of the replacement shipper after the release, the Commission found no purpose in requiring the releasing shipper to be responsible for these charges.

While the Commission still finds this rationale generally persuasive, it should not be invoked unnecessarily to impede capacity release transactions. Thus, the Commission could permit a releasing shipper to assume liability for usage and related charges for a limited period during which the pipeline completes the credit check and the contracting process.

2. Flexibility in the Use of Capacity

One of the Commission's goals is to provide shippers with the utmost flexibility to manage their capacity, so they can derive the maximum benefit from that capacity whether through their own use or through release. The Commission, therefore, has adopted policies requiring pipelines to permit shippers to segment or aggregate capacity or use their capacity to effect backhauls and exchanges.[14] In the oft-quoted example of such flexibility in Order No. 636, the Commission explained that a shipper with capacity from the Gulf of Mexico to New York City could release the portion from the Gulf to Atlanta, Georgia, and separately release the portion from Atlanta to New York or retain the Atlanta to New York portion for the releasing shipper's own use.[15]

The Commission also requires pipelines to provide for flexible receipt and delivery points. Under this policy, any firm shipper can switch its primary firm receipt or delivery points to any available point and also use any available point on a secondary basis (with a lower priority than a shipper using the point as a primary point, but a greater priority than interruptible transportation, since the use of the alternate point is for firm capacity).[16]

In some cases, releasing and replacement shippers may not be getting the full flexibility in managing their capacity that the Commission envisioned in Order No. 636. Thus, the Commission will fully enforce its current policies, and supplement those policies as necessary, so that shippers have the tools to structure their use or release of capacity to best meet their needs.

a. Segmentation of Capacity

During the informal discussions with Commission staff, several participants stated that segmentation on some pipelines was difficult, particularly in the supply area. The Commission also has become aware of segmentation problems in some cases.[17]

As the Commission stated recently in Opinion No. 405,[18] the ability to segment capacity is an integral feature of the capacity release mechanism. Segmentation can increase both releasing and replacement shippers' access to supply sources. For example, through segmentation, a releasing shipper can obtain access to an alternative supply source while still recouping some of its investment by releasing its supply area capacity to a

[11] El Paso Natural Gas Company, 61 FERC ¶ 61,333, at 62,311–12, *aff'd*, 62 FERC ¶ 61,311, at 62,999–17–999–18 (1993).

[12] For transactions subject to bidding, the standards impose a one-day delay between notification of the pipeline and the ability to nominate to permit the pipeline to complete the bidding process. This aspect of comparability is discussed in the competitive bidding section, *infra*.

[13] Order No. 636–A, FERC Stats. & Regs. Preambles [January 1991–June 1996] at 30,564–65; Order No. 636–B, 61 FERC at 61,998.

[14] Order No. 636, FERC Stats. & Regs. Preambles [January 1991–June 1996] at 30,420–21; Order No. 636–A, FERC Stats. & Regs. Preambles [January 1991–June 1996] at 30,558; Order No. 636–B, 61 FERC at 61,997.

[15] *Id.*

[16] Order No. 636, FERC Stats. & Regs. Preambles [January 1991–June 1996] at 30,428–29; Order No. 636–A, FERC Stats. & Regs. Preambles [January 1991–June 1996] at 30,583.

[17] *See* ANR Pipeline Company, 75 FERC ¶ 61,082, at 61,242 and 75 FERC ¶ 61,083 (1996).

[18] Transcontinental Gas Pipe Line Corporation (Transco), 76 FERC ¶ 61,021, slip op. at 15, 18–19 (1996).

replacement shipper. The release then provides the replacement shipper with access to the supply area without having to obtain, and pay for, the full mainline path of the releasing shipper. With the right to segment capacity between interconnections, shippers can customize their capacity reservations to match their precise transportation path needs.

The Commission, therefore, will vigorously enforce segmentation rights to ensure that the capacity release system operates as effectively as possible. As summarized in Opinion No. 405, the Commission's current policy requires that pipelines adhere to the following four principles in order to provide shippers with full and effective segmentation rights.

First, to the extent operationally feasible, pipelines must assign specific rights to capacity, including storage capacity, and capacity at receipt and delivery points.[19] To ensure shippers are aware of available capacity, pipelines must fully comply with the Commission regulations to post available capacity at each receipt and delivery point.[20]

Second, the releasing shipper must be able to schedule service up to its contract demand (CD) level on any segment it retains, while the replacement shipper can simultaneously schedule up to its CD level on the released segment. The purpose of permitting segmented capacity would be frustrated if different segments of the pipeline could not be used simultaneously. Therefore, the pipeline should not impose a Maximum Daily Quantity (MDQ) limitation that prevents the segmented use of capacity.[21]

Third, absent a condition in the release, the replacement shipper must have the same right to use alternate receipt and delivery points as other firm shippers.[22]

Fourth, segmented releases must be scheduled as quickly as non-segmented releases. There should be no additional payments for segmenting capacity, nor should pipelines limit the amount charged for releases of segments of capacity except that the price for any single release may not exceed a price cap set by the Commission.[23] Thus, releasing shippers can subdivide their capacity as many times as they are able even if the total amount received for the various releases exceeds the as-billed rate paid by the releasing shipper.

In addition to the policies articulated in Opinion No. 405, the Commission expects pipelines to adhere to the principle, established in Order No. 636–B,[24] that forward haul shippers should be permitted to release their capacity for a backhaul. Backhauls are, in essence, segmented releases, which should be permitted unless the pipeline can document operational constraints.

The Commission intends to apply these policies when it reviews pipeline tariff filings or in other proceedings. Segmentation also is an issue that the industry can examine through GISB to determine whether standards for segmentation can be developed.

In addition, firm shippers should be able to use their own capacity in segments. In the Commission's original formulation of the segmentation requirement, it addressed segmentation only in the context of capacity release; it did not specifically apply the policy to shippers segmenting their capacity for their own use. There appears no reason to distinguish between segmentation for capacity release and segmentation for a shipper's own use. Permitting shippers to segment capacity for their own use may enhance their ability to make full use of capacity, as well as enhance the value of released capacity, because the replacement shipper can segment the capacity it buys. The Commission welcomes comments on whether pipelines should be required to permit shippers to segment their capacity when not releasing capacity.

b. Use of Receipt and Delivery Points

During the restructuring proceedings mandated by Order No. 636, the Commission permitted some pipelines to retain existing tariff provisions that did not permit shippers' primary receipt and delivery point CD rights to exceed their mainline rights.[25] As a consequence, the Commission accepted tariff provisions under which releasing shippers would lose their rights to primary receipt or delivery points if replacement shippers changed primary points under the release.[26] Even at the time, the Commission was skeptical about the justifications for such restrictions,[27] and rejected applications to impose similar restrictions by pipelines without pre-existing restrictions.[28]

The continuation of such restrictions appears to limit the utility of the capacity release mechanism. A releasing shipper may be unwilling to enter into a short term release if, in so doing, it loses priority to its primary receipt and delivery points for the remainder of a 20-year contract. On the other hand, a replacement shipper may need to use receipt and delivery points different from those held by the releasing shipper. The replacement shipper may be reluctant to bid on mainline firm capacity if its ability to receive or deliver gas at a currently available point is subject to bumping by shippers coming later in time.

The Commission, therefore, intends to look more closely at restrictions on the ability of replacement shippers to change primary receipt or delivery points in the future. As pointed out in Opinion No. 405, pipelines may not impose overly restrictive limits on the amount of primary receipt and delivery point capacity that a shipper can reserve, and any such limitations must be operationally justified.

Pipeline operational flow orders (OFOs) also may create difficulties for replacement shippers using secondary points. An OFO may give shippers at a primary point scheduling priority over those using that point on a secondary basis even though the operational problem giving rise to the OFO is not at the point in question, but instead affects an upstream point on the mainline to which all the shippers have equal firm rights. For example, according to OFO notices that the Commission downloaded from pipeline EBBs during

[19] *See* Texas Eastern Transmission Corp., 62 FERC ¶ 61,015 at 61,080 (1993); Arkla Energy Resources, 62 FERC ¶ 61,076 at 61,452 (1993).

[20] 18 CFR 284.8(b)(3) (provide notice of capacity at all receipt and delivery points); Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), FERC Stats. & Regs. Preambles [January 1991–June 1996] ¶ 30,988 (Dec. 23 1993) at 31,007, *order on reh'g*, Order No. 563–A, 59 FR 23,624 (May 6, 1994), FERC Stats. & Regs. Preambles [January 1991–June 1996] ¶ 30,994 (May 2, 1994), at 31,040–41, *order on reh'g*, Order No. 563–B, 68 FERC ¶ 61,002 (1994) (posting of operationally available capacity).

[21] *See* Texas Eastern Transmission Corp., 63 FERC ¶ 61,100 at 61,452 (1993); Texas Eastern Transmission Corp., 62 FERC ¶ 61,015 at 61,111 (1993); Panhandle Eastern Pipe Line Co., 61 FERC ¶ 61,357 at 62,419 (1993).

[22] *See* El Paso Natural Gas Company, 62 FERC at 62,984, 62,991 (1993). The priority for scheduling service at alternate receipt and delivery points is lower than that for primary receipt and delivery points. Once scheduled, however, service at alternate points has the same priority as service at primary points. Alternate firm receipt and delivery points always have priority over interruptible service.

[23] *See* Order No. 636 at 30,420–21.

[24] Order No. 636–B, 61 FERC at 61,997.

[25] Transwestern Pipeline Company, 62 FERC ¶ 61,090, at 61,659, 63 FERC ¶ 61,138, at 61,911–12 (1993).

[26] A releasing shipper could preserve its right to return to its primary point after the release by including a provision in its notice of release restricting the replacement shipper's ability to change points.

[27] *See* Transwestern Pipeline Company, 62 FERC at 61,659, 63 FERC at 61,911–12 (1993); El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,982–83 (1993).

[28] *See* Northwest Pipeline Company, 63 FERC ¶ 61,124, at 61,806–08 n.72 (1993).

the winter of 1996, some pipelines restricted scheduled secondary point deliveries, but did not limit scheduled primary point deliveries.[29] In this situation, a replacement shipper's inability to use an available primary point could result in a limitation on the amount of gas it can receive during a peak period.

The Commission invites comment on whether pipeline OFOs have caused problems for the use of secondary point capacity. Commenters should suggest, based on their experience, ways in which OFOs can be more narrowly focused or handled differently while still permitting the pipelines to respond to operational problems on their systems. Comments also should address whether primary and secondary receipt and delivery points should be treated identically in OFO situations when the operational constraint involves mainline capacity. This would be consistent with the Commission's current policy that once gas is scheduled, firm service is firm service, with no distinction in priority between firm service designated for primary and secondary points.

B. The Bidding Requirement

The current regulations exempt capacity release transactions from competitive bidding if the transactions are at the maximum rate or are for 31 days or less.[30] Bidding is thus required for all discounted releases (at less than the maximum tariff rate) longer than 31 days; and for discounted 31 day-or-less transactions if the release is a rollover or continuation of an exempt 31-day-or-less transaction. The Commission's principal goal in requiring posting and bidding was to make capacity release transactions open so other shippers could conduct price discovery and could monitor transactions for potential discrimination.[31] The competitive bidding requirement was intended to ensure that interstate transportation capacity would be allocated to those placing the highest value on obtaining that capacity and to prevent discriminatory allocation of interstate capacity at prices below the going market price.

The Commission has received a number of requests, particularly from LDCs, to eliminate mandatory competitive bidding on pipeline EBBs. Those advocating the removal of the bidding requirement contend bidding adds delay to the capacity release process due to the administrative cumbersomeness of the pipelines' bidding procedures. They maintain bidding also adds uncertainty to the process because it creates a risk for the replacement shipper that it will be unable to acquire capacity at the price it expected. Bidding, they assert, thus can prevent parties from negotiating mutually beneficial transactions. They further maintain that, in the over two years the capacity release system has been in effect, no significant pattern of abuse has been shown.

Proliance Energy LLC and Baltimore Gas and Electric Company filed comments on the GISB standards in Docket No. RM96–1, arguing that, due primarily to the bidding process, the GISB standards do not fully achieve the Commission's goal of providing for comparability between the capacity release process and the process of obtaining pipeline short-term services, like interruptible or short-term firm. They pointed out that interruptible shippers can nominate on the day they want capacity, while the GISB standards require at least one day (if not more) to complete transactions subject to bidding.

Based on the data collected by the Commission, bidding does not appear to be widespread.[32] From May 1, 1995, to June of 1996,[33] competing bids were submitted on only 14% to 20% of all transactions subject to bidding (which themselves comprise 28% of all transactions).[34] For transactions longer than 31 days, the percentage on which competitive bids were made is in the range of 25% to 31%.

The original purposes of the posting and bidding requirements were first and foremost to ensure public disclosure of capacity release transactions, for both price discovery and monitoring, and secondarily to ensure that capacity was allocated to the shipper placing the greatest value on the capacity. In light of the experience with capacity release, the Commission has reconsidered whether the bidding requirement continues to be warranted. Experience demonstrates that the competitive bidding requirement introduces delay, uncertainty, and inefficiency into the capacity release process and is used infrequently.

Even with the improvements in the GISB standards, the bidding process still creates at least a one-day delay, and consequent uncertainty for replacement shippers, who cannot be sure that they will obtain the needed capacity at the price they are willing to pay.[35] The delays and uncertainty imposed by mandatory competitive bidding just do not seem warranted given that the data show that, for all biddable transactions, competitive bids are submitted, at most, one-fifth of the time.

The delay and uncertainty created by the competitive bidding requirement further interferes with the goal of ensuring comparable treatment between capacity release and pipeline short-term services. As discussed in the prior section, if bidding is eliminated, replacement shippers can nominate under a timetable comparable to that of interruptible shippers. If competitive bidding is retained, however, the Commission does not see how comparability between biddable capacity release transactions and pipeline services could reasonably be achieved. The present GISB timetable requiring the posting, bidding, and matching process to take place in a 4-hour window the day prior to nomination seems about as fast as can be reasonably required.

In addition, the Commission is aware that parties have been able to design means of avoiding the bidding requirement.[36] Eliminating bidding

[29] Also, a pipeline's OFO may require shippers to shift supply from secondary to primary points. When this provision is coupled with a restriction on the replacement shipper's ability to change primary points at the initiation of a release, the replacement shipper may be unable to deliver gas where needed when an OFO is invoked. *Compare* Northwest Pipeline Company, 71 FERC ¶ 61,315 (1995) (OFO can require shippers to switch supply from secondary to primary points) *with* Transwestern Pipeline Company, 62 FERC ¶ 61,090, at 61,659, 63 FERC ¶ 61,138, at 61,911–12 (1993) (replacement shipper's ability to switch to a new primary point is restricted).

[30] 18 CFR 284.243(h).

[31] Order No. 636–A, FERC Stats. & Regs. Preambles [January 1991–June 1996] at 30,555.

[32] The appendix provides more details of the capacity release information the Commission has downloaded from the pipelines.

[33] Although the capacity release mechanism has been in place since the fall of 1993, the May 1, 1995 date was chosen so that the analysis would be based on a consistent set of data reflecting the current regulations. Prior to May 1, 1995, the exemption from the bidding requirement applied only to less-than-one-calendar-month transactions. For the period after May 1, 1995, Order No. 577 extended the bidding exemption to 31-day-or-less transactions.

[34] As shown in the appendix, the differences in the percentages in the range reflect the effect of adjustments to deal with inconsistent, and contradictory data showing a transaction as being non-biddable, but also showing competing bids having been submitted.

[35] If the releasing shipper specifies methodologies for determining the highest bid other than the three standard methods, the bidding process may take longer, introducing even further delay. The three standard methodologies for determining the highest bid are the highest absolute rate (independent of time and quantity), the highest net revenue (rate times quantity independent of when revenues are received), and the highest net present value (rate times quantity adjusting for when revenues are received). Capacity Release Standard 5.3.3.

[36] Inside F.E.R.C.'s Gas Marketing Report for December 1, 1995 (McGraw-Hill) alludes to a ''well-developed set of tricks'' allowing some capacity

Continued

ensures that those abiding by the rules are not disadvantaged compared to those who skirt them. Trying to control these avoidance practices would only be likely to introduce greater administrative inefficiencies into the process, inefficiencies which the amount of competitive bidding does not seem to justify.

Even with elimination of bidding, the Commission's paramount goal—providing public disclosure of transactions—will still be achieved by continuing, and strengthening, the posting requirement. Indeed, elimination of bidding may well result in greater and more accurate public disclosure of price data, because shippers may forego the mechanisms they have been using to avoid the bidding requirement.

The elimination of bidding does not mean that a releasing shipper can release its capacity in an unduly discriminatory fashion, and the Commission can still take action if it detects a pattern of undue favoritism. For example, a release of capacity cannot be tied to conditions unrelated to the use of the interstate capacity, such as the purchase of gas from the releaser.[37]

The posting requirements, however, need to be strengthened. In downloading pipeline capacity release information, the Commission has found that relevant information about completed transactions is not available in a single dataset.[38] Easily accessible and retrievable information about release transactions is crucial for the Commission and the industry to monitor capacity release transactions effectively. Thus, additional standardization appears necessary. GISB should coordinate with Commission staff in seeking to resolve these issues, and, if necessary, staff can convene a technical conference.

The Commission is proposing to discontinue the pipelines' obligation to afford a posting and bidding option for those shippers wanting to solicit competitive bids. Given the preponderance of pre-arranged transactions,[39] requiring pipelines to provide a bidding service (and permitting them to recover the costs of this service in their cost-of-service) does not appear warranted.

The proposal to eliminate the requirement for pipelines to provide a bidding service does not signify that the Commission finds bidding unimportant. Even if only a small percentage of capacity release transactions are subject to bidding, the bidding results may provide valuable information about the value of released capacity.

A mandatory requirement for pipelines to provide a bidding service, however, does not appear necessary for releasing shippers to post capacity for bid. Elimination of the requirement for bidding through the pipelines will create an opportunity for the market to create even more efficient, computerized capacity trading processes. At present, third-party service providers cannot establish efficient bidding programs for transactions subject to competitive bidding, because transactions cannot be fully consummated on the third-parties' systems; a pre-arranged transaction on the third-party boards still must be transmitted to the pipeline and re-posted for a second round of bidding according to the pipeline's bidding requirements. With the bidding requirement removed, the dual posting will be eliminated, enabling third-party service providers to complete transactions and then use the GISB standards to upload the results to the pipelines for processing. In addition, if they choose, pipelines still could institute a bidding service in response to market demand.

The Commission requests comments on whether the requirement that pipelines provide a posting and bidding service should be continued, and, given that pipelines currently provide such a system on their EBBs, how expensive it would be to continue providing the service. Commenters, however, should take into account the possible need to upgrade computer systems (for example, to permit file uploads of bids and offers) as well as the additional costs of maintaining a bidding mechanism if EBBs were replaced with more standardized Internet technologies, as the industry is considering in the Business Practices Rulemaking in Docket No. RM96–1.

Those commenters recommending retention of the bidding requirement are requested to propose changes to improve the efficiency of the current bidding mechanisms. For example, the Commission requests comment on whether the efficiency of bidding could be improved if third-party boards satisfied the bidding requirement. The Commission requested and received some comments on substituting bidding on third-party boards for pipeline bidding in response to the Business Practices NOPR in Docket No. RM96–1. The few who commented on the issue opposed the requirement on the grounds that locating capacity might be made more difficult if shippers looking for capacity on one pipeline had to monitor postings on all third-party boards. Commenters should consider whether this problem outweighs the potential efficiency gains from third-party bidding. Also, comments should discuss whether the perceived problem—that pipeline listings will appear on multiple third-party boards—is likely to occur or whether there are methods for handling such problems. For example, the pipeline and its customers could jointly solicit bids for, and choose, the third-party service provider that will list offerings for that pipeline. Or, the Commission could set standards that would ensure that shippers could access multiple third-party displays on a single computer (for instance, by using Windows™ or Internet browsers).

The Price Cap

The Commission's regulations do not permit the rate for released capacity to exceed the maximum rate in the pipelines' tariffs. The Commission initially imposed this ceiling because the secondary market had not been shown to be sufficiently competitive that releasing shippers would be unable to exert market power.[40]

The Commission's inquiry here is to determine whether the price cap can be lifted because the secondary market is sufficiently competitive so that releasing shippers cannot exercise market power. The Commission recognizes that, on many pipelines, a large number of shippers hold firm capacity and, due to the Commission's flexible receipt and delivery point policy, numerous shippers may be able to compete in offering capacity to potential

traders to circumvent the bidding and roll-over requirements. One such tactic mentioned in the article is for the buyer to use different company names to effect multi-month releases. The buyer uses one name to purchase capacity under the 31-day-or-less exemption in the first month and then avoids the bidding requirement for the next month by using a different company name, such as that of an affiliate.

[37] Order No. 636–A, FERC Stats. & Regs. Preambles [January 1991–June 1996] at 30,559. As an example of discriminatory use of interstate capacity by an LDC, see Interstate Gas Marketing., Inc. v. Pennsylvania Public Utility Commission, No. 377 C.D. 1995, 1996 Pa. Commw., Lexis 270 (June 24, 1996).

[38] For example, some relevant information about pre-arranged transactions is found in the dataset for capacity release offers, but is not transferred to the dataset providing information about awards. Thus, the Commission has to download both datasets to obtain the information. An additional complication is that some pipelines purge their offer and bid datasets after a transaction is completed. Thus, unless shippers or the Commission download daily, which adds burden and expense, some of this detail is lost.

[39] Ninety-two percent of all capacity release transactions are pre-arranged.

[40] Order No. 636–A, FERC Stats. & Regs. Preambles [January 1991–June 1996] at 30,560.

replacement shippers. Pipeline short-term services, interruptible and short-term firm, also potentially compete with capacity release transactions. In addition, the Commission is mindful that removing the cap for releases and for pipeline short-term services may produce more efficient capacity utilization by permitting prices to rise to market clearing levels. Removal of the cap also may remove the incentive for releasers to use the ''gray market'' as a means of circumventing the price cap.[41]

The Commission, however, has some concerns about the potential for the exercise of market power in certain situations. First, regardless of the number of firm shippers on a pipeline, LDCs may still exercise market power over customers behind their city-gate. Because a customer behind an LDC's city-gate must use the LDC's system to transport gas to its final destination, the LDC may be able to structure its intrastate service so that the end-user's ability to obtain released interstate capacity from shippers other than its own LDC is limited.[42]

In addition, an LDC's control over take-away capacity at primary delivery points may limit the capacity choices of a customer behind the city-gate, and thus confer market power on the LDC. If a customer behind an LDC's city-gate purchases capacity from its own LDC, it will obtain access to the city-gate delivery point on a primary basis. If, however, it buys mainline capacity from another firm shipper (with a different primary delivery point), the customer would have to effect delivery to the city-gate as a secondary delivery point. Particularly during peak periods, the customer may not be able to use the secondary point if it is preempted by the LDC's use of the point on a primary basis. In this event, the customer would not have access to a competitive market for capacity; it would have only one realistic capacity option—the primary point capacity of its own LDC.

Second, on some pipelines or portions of systems, the market may not be competitive, because one or only a few shippers control the firm capacity, producing high concentration indices indicative of the potential to exercise market power. For example, a downstream shipper may possess market power because it holds a large percentage of the available capacity on the last segment of the pipeline. This may be particularly true on a telescoping pipeline where the capacity of the system decreases the farther downstream one goes.

Third, interruptible capacity, standing alone, may not be a sufficient competitive alternative to released capacity. In the first place, interruptible service on a fully subscribed pipeline becomes available only if firm shippers are not using or releasing their firm capacity. On a peak day, for instance, a replacement shipper cannot simply reject a high asking price for firm capacity release and count on the use of interruptible service. If the replacement shipper rejects the released firm capacity, and the releasing shipper either uses the capacity itself or releases it to another replacement shipper, the interruptible capacity may not be available. Even if the replacement shipper is able to acquire interruptible capacity, its use of the interruptible service is still subject to being bumped by firm service.

Although shippers potentially can use the ''gray market'' to avoid the price cap, the Commission does not find the existence of the gray market sufficient to warrant across-the-board removal of the price cap. The Commission is unaware of any empirical data on the extent of gray market activity, but the available information suggests that the gray market is not a sufficiently attractive alternative that it will replace capacity release. For example, the amount of capacity represented by capacity release transactions is growing and a significant number of the transactions during peak periods take place at maximum rates.[43] The requests by LDCs to remove the price cap from the release market further indicate that LDCs do not find the gray market a completely satisfactory substitute for capacity release.

Moreover, the Commission cannot abjure its statutory responsibility to ensure that rates are just and reasonable simply because of the potential for shippers to avoid the price cap.[44] Unless a shipper can show that it cannot exercise market power, the Commission cannot conclude that the market-based rates the shipper would charge are competitive and, therefore, just and reasonable. The appropriate response to the gray market, therefore, is not to remove the rate cap across-the-board, but to establish reasonable conditions that will permit shippers to exceed the price cap when they cannot exercise market power.

The Commission, however, does have some concerns about whether the gray market may reduce the efficiency and effectiveness of the capacity release market and may permit undue discrimination to occur. In view of the Court of Appeals decision in UDC, the Commission is interested in exploring the extent of gray market activity and possible approaches for achieving a consistent regulatory framework for both capacity release and the gray market. Although the Commission does not wish to disrupt economic transactions occurring in the gray market, it is interested in receiving comments on alternatives for regulating capacity release and gray market activities, such as whether gray market transactions should be subject to after-the-fact posting.

The Commission proposes to lift the price cap for released, interruptible, and short-term firm capacity when releasing shippers and pipelines can demonstrate that they are unable to exercise market power.[45] The Commission is proposing to include in its capacity release regulations at section 284.243(e) a provision authorizing shippers to submit applications to remove the price cap. Consistent with the Commission's Policy Statement on Alternatives to Cost-of-Service Ratemaking,[46] pipelines seeking to remove the cap for interruptible service can file a request for a declaratory order.

LDCs (or in some cases other shippers controlling take-away capacity at delivery points) would have an additional prerequisite to establish that they cannot exercise market power. They will need to establish that they provide the ability to obtain (either individually or through aggregation) open access transportation on the LDC's facilities. If an LDC does not provide

[41] By making a bundled sale, releasers avoid the cap by, in effect, adding the full price of capacity (even if above the cap) to the unregulated price for gas to produce a total price to the buyer fully reflective of the amount the buyer is willing to pay for capacity.

[42] *See* Questar Pipeline Company, 64 FERC ¶ 61,157, at 62,282–83 (1993); Meridian Oil Inc. v. Southern California Gas Co., 65 FERC ¶ 61,379 (1993) (raising concerns about intrastate rate structures effect on LDC customers' ability to seek interstate capacity from sources other than their own LDC).

[43] *See* Appendix, at p. 1 and 5. For example, according to the Commission's data, 30% of releases during the peak heating season in January 1996 were at the maximum rate.

[44] If the Commission had information showing that a shipper making a sale for resale used a bundled sale to exceed the maximum rate for interstate transportation, the Commission has the statutory authority to take action against that shipper. Such action could include revocation or limitations on the shippers' blanket marketing certificate to make sales for resale. 18 CFR 284.401–02. In addition, if the gray market sale is a buy-sell, it is prohibited. *See* Order No. 636, FERC Stats. & Regs. Preambles [January 1991–June 1996] at 30,416, *aff'd*, United Distribution Co. v. FERC, slip op. at 77–81.

[45] The Commission may, in some circumstances, need to consider the relationship between an LDC and its affiliate if that affiliation bears upon the ability of the combined entity to exercise market power.

[46] 74 FERC ¶ 61,076 (1996).

open access transportation, its intrastate rates and terms and conditions of service may discourage its customers from seeking capacity from other interstate shippers. If the LDC provides open access transportation, however, a customer can be assured of transportation on the LDC's facilities regardless of whether it purchases interstate capacity from the LDC or another shipper. In addition, an LDC's open access provisions need to deal with the market power conveyed by the LDC's control over primary delivery points. Thus, an acceptable open access service would need to include a right for customers behind the city-gate to use the LDC's city-gate as a primary delivery point, regardless of whether they purchase interstate capacity from the LDC.

The Commission solicits comments on a number of aspects of this proposal. Comments should address how to measure market power in the secondary market, such as whether to use the traditional market power analysis as used in the Policy Statement or whether modified criteria can ease the evidentiary burden, without compromising the integrity of the market power analysis. Comments should further address the minimum criteria needed for an acceptable open access program and the relationship between the open access definition and the required market power showing. For example, should the Commission presume that there is sufficient competition if an LDC's open access program includes an assignment of its upstream interstate capacity rights to its customers either individually or through aggregation?[47] By virtue of such an assignment, there presumably would be such a large number of holders of primary point capacity to the LDC's city-gate that any potential buyer behind the city-gate would have a sufficient number of alternative sources of capacity.

The Commission further requests comment on whether LDCs should be permitted to directly assign their capacity, without going through the pipeline's contracting process, in certain circumstances, such as when they have demonstrated a lack of market power. Comments should address whether a lack of market power provides adequate protection to permit direct assignment and what limitations, if any, should be imposed on direct assignment.

Comments also should consider how the Commission should determine whether an LDC's open access program meets the necessary open access criteria. For example, the Commission could review an LDC's program *de novo* or it could first require challenges to made at the state level and give deference to determinations by state Public Utility Commissions.

The Commission is proposing to permit pipelines to file to have the price cap lifted for interruptible and short-term firm service, because these services appear to compete directly with capacity release. In the staff paper attached to the February 8, 1995 request for comments on market-based rates, the staff concluded that market-based rates for pipeline interruptible service might be warranted upon a showing that capacity release was a good substitute for pipeline interruptible service, but that the ability, at that time, to make such a showing was doubtful.[48] With the revisions to the capacity release program to make it comparable to pipeline short-term services, capacity release should now become a sufficient alternative to pipeline capacity. The Commission, however, requests comments on issues relating to the release of the price cap for short-term firm service, such as how to establish regulations dealing with roll-overs or extensions of short-term firm contracts to ensure that shippers do not lose the protection of the price cap when they purchase long-term firm capacity.

As an alternative to the maximum reservation rate limitation on all capacity releases, or the complete elimination of the price cap, the Commission requests comments on the appropriateness of permitting the release and reassignment of capacity subject to a cost-based annual revenue cap. Under such an approach, what reporting requirements should be imposed on holders of capacity to ensure that the annual revenue limitation is not exceeded? If the Commission adopts this revised revenue cap, should it apply for short-term firm and interruptible transactions as well? How should the interruptible rate under an annual limitation be determined?

After receipt of comments on this proposal, the Commission intends to hold a technical conference to explore issues related to removal of the price cap and the best means of measuring market power in the secondary market. In addition, to obtain additional record information for determining whether, and how, to relax the price cap, the Commission is proposing, in a separate order in this docket, to establish an experimental, pilot program under which the cap will be lifted for some LDCs and pipelines which meet the specified criteria. The Commission will use the record developed from the comments, the technical conference, and the pilot program to make its final determination on whether, and how, to relax the price cap.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[49] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The proposed regulations would impose requirements only on interstate pipelines, which are not small businesses, and, in fact, the overall effect of these revisions is to reduce costs, not only for the pipelines, but for those dealing with pipelines, including small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[50] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[51] The action taken here falls within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[52] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VI. Information Collection Requirement

OMB's regulations at 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by a Federal agency. Upon approval of a

[47] This assignment is akin to the assignment of pipeline upstream 858 capacity to its customers in Order No. 636.

[48] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, 70 FERC ¶ 61,139, at 61,415 (1995) (Request for Comments on Alternative Pricing Methods).

[49] 5 U.S.C. 601–612.

[50] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[51] 18 CFR 380.4.

[52] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

collection of information, OMB shall assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this proposed rule shall not be penalized for failing to respond to these collections of information unless the collections of information display valid OMB control numbers.

Title: FERC–545, Gas Pipeline Rates: Rate Change (Non-formal).

Action: Data Collection/Requirements.

OMB Control No.: 1902–0154.

Respondents: Interstate Natural Gas Pipelines (Not applicable to small businesses).

Frequency of Responses: One-time tariff filings (First year).

Title: FERC–549B, Gas Pipeline Rates: Capacity Release Information.

Action: Reduction in Data Collection/Requirements.

OMB Control No.: 1902–0169.

Respondents: Interstate Natural Gas Pipelines (Not applicable to small businesses).

Frequency of Responses: Continuing/Day-to-Day—Elimination of Certain Capacity Release/Competitive Bidding Requirements (Annual Burden/Cost Reduction).

Necessity of Information: The subject Notice of Proposed Rulemaking solicits public comments on the Commission's efforts to encourage greater use of the capacity release mechanism and to make capacity release more competitive with other means of acquiring capacity. The implementation of the proposed revisions to the Commission's regulations would help the Commission carry out its responsibilities under the Natural Gas Act and coincide with the current regulatory environment which the Commission instituted with Order Nos. 636, 563, and 587 and the restructuring of the natural gas industry. The Commission's Office of Pipeline Regulation (OPR) would use the tariff data filed under FERC–545 in rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas and for general industry oversight. Based on experience over the last two years, the Commission has determined that the competitive bidding requirements may no longer be warranted and that their elimination may increase industry efficiency. The information collected under FERC–545 in the subject NOPR would be reported to the Commission and be subject to audit.

The Commission is submitting a copy of the subject NOPR to OMB for its review. Interested persons may obtain information on the proposed modifications to the Commission's regulations by contacting the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202)208–1415] or the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission (202)395–3087].

VII. Comment Procedures

The Commission invites interested persons to submit written comments on the matters proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. An original and 14 copies of comments to this notice must be filed with the Commission no later than October 7, 1996. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should refer to Docket No. RM96–14–000. Additionally, the Commission strongly encourages commenters to submit a computer diskette of their comments in WordPerfect version 6.1 format or lower or in ASCII format, with the name of the filer and Docket No. RM96–14–000 on the outside of the diskette. Those providing files in ASCII format should take care to examine the form of an ASCII conversion to ensure, for instance, that it includes footnotes, headers, and footers, as these have often been left out in past electronic filings. All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements, Incorporation by reference.

By direction of the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 284, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C 7101–7532; 43 U.S.C 1331–1356.

2. § 284.243 is amended by removing paragraph (h), redesignating paragraph (g) as paragraph (h), and revising paragraphs (b) through (f) and adding paragraph (g) to read as follows:

§ 284.243 Release of firm capacity on interstate pipelines.

* * * * *

(b) Firm shippers must be permitted to release their capacity, in whole or in part, on a permanent or short-term basis, without restrictions on the terms and conditions of the release. A replacement shipper is any shipper that obtains released capacity.

(c) A firm shipper that wants to release any or all of its firm capacity must notify the pipeline of the replacement shipper to which it wishes to release its capacity and the terms and conditions of the release. The pipeline must provide a mechanism complying with § 284.10 of this part by which the shipper or its designated agent can notify the pipeline of the terms of the release.

(d) The pipeline must provide notice of the name of the replacement shipper and the terms and conditions of the release on its Electronic Bulletin Board and in downloadable files required under § 284.10 of this part.

(e) The pipeline must allocate released capacity to the replacement shipper at the rate established by the parties, but such rate shall not exceed the pipeline's maximum rate, unless the Commission has granted the releasing shipper's application to release capacity at a rate exceeding the maximum.

(f) Unless otherwise agreed by the pipeline, the contract of the shipper releasing capacity will remain in full force and effect, with the net proceeds from any resale to a replacement shipper credited to the releasing shipper's reservation charge. If the releasing shipper has released its capacity for the remaining term of its contract, the pipeline must permit the releasing shipper to terminate its contract.

(g) The pipeline must establish tariff provisions that will permit replacement shippers to nominate and contract for service on a basis comparable to shippers nominating and contracting for interruptible or firm capacity from the pipeline.

* * * * *

Note.—The following appendix will not appear in the Code of Federal Regulations.

Appendix—RM96–14–000

I. Capacity Release Award Characteristics

Source: Monthly EDI Downloads—30 Pipelines [1]

Released Capacity Held By Replacement Shippers

(Trillion Btu/day)

Capacity Held During the Month [2]

(From Awards Between 06/01/94 and 04/30/96)

	Max	Average
January 1995	9.4	8.8
February 1995	10.8	10.1
March 1995	10.5	9.9
April 1995	11.7	11.2
May 1995	12.6	11.9
June 1995	14.1	13.3
July 1995	14.9	14.0
August 1995	17.0	16.0
September 1995	17.1	16.4
October 1995	16.1	15.5
November 1995	15.1	14.4
December 1995	14.1	13.5
January 1996	13.9	13.3
February 1996	15.1	14.6
March 1996	15.2	14.7
April 1996	17.5	16.7

NOTE: The same 30 pipelines reported 86.5 trillion Btu/day firm transportation quantities in their April 1, 1996 Index of Customers filing.

CAPACITY RELEASE AWARDS BY TERM AND WHETHER PREARRANGED

[Awards from 5/1/95–5/31/96] [3]

Term	Prearranged	No. of awards	Percent of total awards
<=31 days	No	1,379	7
	Yes	16,696	82
		18,075	89
> 31 days	No	172	1
	Yes	2,007	10
		2,179	11
All	No	1,551	8
	Yes	18,703	92
		20,254	100

[3] Awards data for May 1996 is not complete.

CAPACITY RELEASE AWARDS BY TERM AND WHETHER RECALLABLE

[Awards from 5/1/95–5/31/96]

Term	Recallable	No. of awards	Percent of total awards
<=31 days	No	6,188	32
	Yes	11,394	58
		17,582	90
> 31 days	No	911	4
	Yes	1,128	6
		2,039	10
All	No	7,099	36
	Yes	12,522	64
		19,621	100

II. Capacity Release Bidding

Source: Monthly EDI Downloads—30 Pipelines (Awards from 5/1/95–5/31/96)

CAPACITY RELEASE AWARDS BY TERM AND WHETHER BIDDABLE AND PREARRANGED [4]

Term	Biddable	Prearranged	No. of awards	Percent
<=31 days	Yes	Yes	1,759	22

[1] Algonquin Gas Transmission, Alabama-Tennessee Natural Gas, ANR Pipeline, Colorado Interstate Gas, CNG Transmission, Columbia Gas, Columbia Gulf, East Tennessee Natural Gas, El Paso Natural Gas, Florida Gas Transmission, Midwestern Gas Transmission, Mississippi River Transmission, Natural Gas Pipeline, Noram Gas Transmission, Northern Border Pipeline, Northern Natural Gas, Northwest Pipeline, Pacific Gas Transmission, Paiute Pipeline, Panhandle Eastern Pipe Line, Southern Natural Gas, Stingray Pipeline, Tennessee Gas Pipeline, Texas Eastern Transmission, Texas Gas Transmission, Trunkline Gas, Trailblazer Pipeline, Transcontinental Gas Pipe Line, Transwestern Pipeline, Williams Natural Gas.

[2] Includes all capacity releases since 6/1/94 still in effect during the indicated month.

CAPACITY RELEASE AWARDS BY TERM AND WHETHER BIDDABLE AND PREARRANGED [4]—Continued

Term	Biddable	Prearranged	No. of awards	Percent
	No	No	310	4
		Yes	5,726	73
		[5] No	104	1
			7,899	100
> 31 days	Yes	Yes	292	34
		No	34	4
	No	Yes	529	61
		[5] No	10	1
			865	100
All	Yes	Yes	2,051	24
		No	344	4
	No	Yes	6,255	71
		[5] No	114	1
			8,764	100

[4] Analysis limited to awards with corresponding offer information in database. Resulting sample size is 43% of all awards. Offer information is source for whether transaction is biddable.
[5] This reported data is inconsistent, since it would seem that a transaction which is non-biddable should be pre-arranged.

CAPACITY RELEASE AWARDS WITH COMPETITIVE BIDDING [6]

Term	Reported as biddable	No. of biddable awards	Awards with competing bids	Percent with competing bids
<=31 days	Yes	1,398	168	12
	No [7]	111	111	.....
	Total [8]	1,509	279	19
>31 days	Yes	252	64	25
	No [7]	21	21	.....
	Total [8]	273	85	31
All	Yes	1,650	232	14
	No [7]	132	132	.....
	Total [8]	1,782	364	20

[6] Analysis limited to awards with corresponding offer and bid information in database. Resulting sample size is 35% of all awards. Offer information is the source for whether transaction is biddable. Bid information indicates whether competing bids were submitted.
[7] This reported data is inconsistent, in that the underlying offers were coded as non-biddable but in fact competitive bids were submitted.
[8] This reflects the inclusion in the analysis of awards coded as non-biddable for which competitive bids were actually submitted. Including these awards leads to the higher percentage of awards with competing bids shown in the last column.

III. Capacity Release Discounts

Source: EDI Downloads—30 Pipelines
(Awards from 6/1/94–5/31/96)

Award date	No. of awards included	Percent of awards with discounted resv. rate	Percent of awards at max. resv. rate	Percent of awards with discounted volum. rate	Percent of awards at max. volum. rate	Mean percent of max. resv. rate (discounted awards)	Mean percent of max. volum. rate (discounted awards)
June 1994	900	62	6	31	1	42.2	33.6
July 1994	856	68	6	26	0	28.5	19.3
August 1994	973	65	6	29	1	18.4	25.5
September 1994	999	68	7	23	2	19.6	24.5
October 1994	1082	62	13	22	4	23.5	27.8
November 1994	907	57	12	28	4	28.0	28.9
December 1994	920	54	15	27	3	27.2	22.8
January 1995	1184	56	14	27	3	25.9	18.7
February 1995	1287	65	10	22	2	25.2	21.7
March 1995	1691	70	8	20	2	24.2	23.6
April 1995	1726	70	6	21	3	22.3	20.6
May 1995	1738	67	7	24	2	21.0	23.8
June 1995	1450	63	5	31	1	22.0	24.1
July 1995	1540	60	6	33	2	26.6	23.9

Award date	No. of awards included	Percent of awards with discounted resv. rate	Percent of awards at max. resv. rate	Percent of awards with discounted volum. rate	Percent of awards at max. volum. rate	Mean percent of max. resv. rate (discounted awards)	Mean percent of max. volum. rate (discounted awards)
August 1995	1597	59	5	34	1	24.2	28.5
September 1995	1776	60	16	23	1	28.6	33.6
October 1995	1804	58	19	22	1	25.1	37.0
November 1995	1462	58	17	21	3	34.5	46.0
December 1995	1048	48	25	24	3	43.8	39.3
January 1996	981	43	30	24	3	41.3	27.0
February 1996	922	46	29	21	3	40.9	20.5
March 1996	1555	56	24	17	3	37.0	21.3
April 1996	1357	66	19	14	2	31.2	17.8
May 1996	609	52	18	29	2	29.8	23.5
June 1996	97	70	7	23	.	15.9	19.6
	30,461	60	13	24	2	27.7	26.3

[FR Doc. 96–20048 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC30

Badlands National Park, Commercial Vehicles

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing this rule to exempt local commercial vehicle traffic on the 5.8 miles of park roads between the park's Northeast and Interior Entrances from the general prohibition on the use of NPS roads by commercial vehicles. The Superintendent will retain sufficient discretion: to require permits for local commercial vehicles traveling within or through the park; establish terms and conditions of such permits; and annually establish and adjust fees for such use based on current administrative costs. The proposed rule will prohibit the transportation of hazardous materials on all park roads, except in limited circumstances. The proposed rule will also prohibit certain oversize/overweight vehicles on all park roads, except in limited circumstances.

DATES: Written comments will be accepted through October 7, 1996.

ADDRESSES: Comments should be addressed to: Superintendent, Badlands National Park, P.O. Box 6, Interior, SD 57750.

FOR FURTHER INFORMATION CONTACT: Irvin L. Mortenson, Superintendent, Badlands National Park, PO Box 6, Interior, SD 57750. Telephone 605–433–5361.

SUPPLEMENTARY INFORMATION:

Background

South Dakota Route 240, from Exit 131 on Interstate 90, passes through the northeast corner of Badlands National Park, traversing the Badlands ''Wall'' at Cedar Pass and intersects with South Dakota Route 377 which, in turn, connects with South Dakota Route 44 at the town of Interior. In 1929, Congress passed legislation authorizing the establishment of Badlands National Monument, subject to the condition ''that the State of South Dakota first construct 30 miles of highways through the 'proposed park' area in a manner satisfactory to the Secretary of Interior.'' After the State of South Dakota completed the highway construction, Badlands National Monument was proclaimed on January 25, 1939. In 1941, the State relinquished ownership to roads within the Monument's boundary.

A general park regulation, 36 CFR 5.6, prohibits commercial traffic in National Parks. Under the proposed regulation, local commercial traffic would be allowed to use the park road connecting the Northeast entrance and the Interior entrance. The transportation of certain hazardous materials and oversize/overweight vehicles on park roads will be prohibited, except as permitted by the Superintendent. The NPS may allow transportation of certain hazardous materials on park roads as necessary to provide access to otherwise inaccessible lands within or contiguous to the park, or in emergency situations as determined by the Superintendent.

The paving of South Dakota Highway 44 in 1986 considerably changed the park's recreational and commercial vehicle patterns and number. In December of 1989, in response to these increases, Badlands National Park mailed over 500 ''scoping brochures'' to various organizations, agencies and individuals seeking public participation in the development of alternatives for the management of commercial traffic in the park. A public scoping meeting was held on January 24, 1990, in Interior, South Dakota, attended by approximately 115 people. Following the public meeting, written comments also were solicited. Public input was received during review of the environmental assessment prepared for the regulation of commercial traffic. This review occurred in April of 1990. Public comments received during that time and NPS review of the issues are reflected in the proposed rule.

Existing Conditions

Local commercial vehicles and some long haul trucks continue to travel through the Badlands National Park's northeast corner on 5.8 miles of park road between the Northeast and the Interior Entrances. South Dakota Route 240 connects with the Badlands Loop Road at the Northeast Entrance and South Dakota Route 377 connects to the park road at the Interior Entrance. South Dakota Routes 240 and 377 are exterior to park boundaries and are maintained by the State of South Dakota only up to the park boundaries. Inside the park, road maintenance is the responsibility of the NPS. South Dakota Routes 240 and 377 are two-lane, paved rural highways designed for a 55 mph speed limit for all vehicle types. The park roads are two-lane, paved roads designed for 45 mph and 25 mph speed limits. Their purpose, as defined by the *Park Road Standards for the National Park System*,

. . . ''(R)emains in sharp contrast to that of the Federal and State highway systems. Park roads are not intended to provide fast and convenient transportation; they are intended to enhance visitor experience while providing safe and efficient accommodation of park visitors and to serve essential management access needs. They are not,

therefore intended nor designed as continuations of the State and Federal-aid network.''

Conclusion

Based on available data on road use and relevant environmental analysis, the impact of local commercial traffic on park roads within Badlands National Park is not sufficient to compel the NPS to prohibit all local commercial traffic on park roads between the Northeast and Interior Entrances. The NPS recognizes the potential hazard posed by the transportation of certain hazardous materials and oversize/overweight vehicles through the park and will regulate or prohibit such use. Those local commercial vehicles carrying hazardous materials that require placarding, or marine pollutants that require marking according to U.S. Department of Transportation regulations, must first obtain a permit when such transportation is necessary for access to lands within or adjacent to the park, where access is not otherwise available, or in emergency situations as determined by the Superintendent. Exceptions include local bulk deliveries of gasoline, diesel, LP gas and certain oversize/overweight agricultural vehicles as provided for by South Dakota State Law. The NPS proposed regulation will not regulate state highways or traffic outside of Badlands National Park.

The proposed rule will allow only those vehicles which originate from, or are destined to, U.S. Postal Service ZIP codes within a 45-mile radius of Cedar Pass in Badlands National Park. These Postal Service ZIP codes, which are in close proximity to the park, were chosen because nearly all the commercial traffic accessing the park originates from these areas. The use of geographic County designations for commercial access to the park would not be appropriate because, with the Counties being so large, thousands of additional commercial vehicles could claim entry to the park. The allowable ZIP code service area includes the following towns:

Allen—57714
Belvedere—57521
Cottonwood—57775
Creighton—57729
Interior—57750
Kadoka—57543
Kyle—57752
Long Valley 57547
Owanka—57767
Philip—57567
Scenic—57780
Wall—57790
Wanblee—57577
Wasta 57791

The NPS prepared an Environmental Assessment (EA) addressing commercial traffic on park roads. The assessment was released for public review in 1990. On March 19, 1990, the Regional Director for the Rocky Mountain Region, National Park Service, signed a Finding of No Significant Impact (FONSI) for the proposal, which would allow local commercial traffic on park roads between the park's Northeast and Interior Entrances, but continue the prohibition of the transportation of certain hazardous materials requiring placarding and certain oversize/overweight cargos through Badlands National Park. Copies of this EA are available from the Chief Ranger's Office.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review comments and consider making changes to the rule based upon an analysis of the comments.

Drafting Information

The principal authors of this proposed rulemaking are Irvin L. Mortenson, Superintendent, former District Ranger Stan Robins, Badlands National Park and Dennis Burnett, Washington Office of Ranger Activities.

Paperwork Reduction Act

The collection of information contained in the permit section of this rule is for the purpose of determining which commercial vehicles meet the requirements allowing them to travel through the park. This collection of information is necessary to issue the permit and has previously been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0124 in accordance with the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

An EA was issued in 1990 under the provisions of the National Environmental Policy Act and a Finding of No Significant Impact signed on June 19, 1990.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Section 7.23 is added to read as follows:

§ 7.23 Badlands National Park.

(a) *Commercial vehicles.* (1) Notwithstanding the prohibition of commercial vehicles set forth in Section 5.6 of this Chapter, local commercial vehicles may operate on the park road between the Northeast entrance and the Interior entrance in accordance with the provisions of this Section.

(2) The term ''Local Commercial Vehicles'', as used in this section, will include the definition of ''commercial vehicle'' in section 5.6(a), but specifically includes only those vehicles which originate from, or are destined to, the following U.S. Postal Service ZIP code areas:

Allen—57714
Belvedere—57521
Cottonwood—57775
Creighton—57729
Interior—57750
Kadoka—57543
Kyle—57752
Long Valley—57547
Owanka—57767
Philip—57567
Scenic—57780
Wall—57790
Wanblee—57577
Wasta—57791

(3) The Superintendent may require a permit and establish terms and conditions in accordance with Section 1.6 of this Chapter for the operation of local commercial vehicles on the park road between the park's Northeast and Interior entrances. The Superintendent may charge a fee for any permits issued

to commercial vehicles in accordance with a fee schedule established annually.

(4) The commercial transport on the park road between the Northeast and Interior entrances of any substance or combination of substances, including any hazardous substance, hazardous material, or hazardous waste that requires placarding, or any marine pollutant that requires marking, as defined in 49 CFR Subtitle B, is prohibited; except for local bulk deliveries of gasoline, fuel oil and LP gas; provided, however, that the Superintendent may issue permits for the transportation of such substance or combination of substances, including hazardous waste, in emergencies, and may issue permits when such transportation is necessary for access to lands within or adjacent to the park area to which access is otherwise not available as provided in 36 CFR 5.6.

(5) The operator of a motor vehicle transporting any hazardous substance, hazardous material, hazardous waste, or marine pollutant in accordance with a permit issued under this section, is not relieved in any manner from complying with all applicable regulations in 49 CFR Subtitle B, or with any other State or Federal laws and regulations applicable to the transportation of any hazardous substance, hazardous material, hazardous waste, or marine pollutant.

(6) The transportation or use of oversize or overweight commercial vehicles on the park road between the Northeast and Interior entrances is prohibited; provided, however that the Superintendent may issue permits for transportation or use of such vehicles and may condition such permits on the use of special routes within the park in order to minimize impacts to park facilities and resources and also may issue permits when the transportation or use of such vehicles is necessary for access to lands within or adjacent to the park area to which access is otherwise not available as provided in 36 CFR 5.6.

(7) Operating without, or violating a term or condition of, a permit issued in accordance with this section is prohibited. In addition, violating a term or condition of a permit may result in the suspension or revocation of the permit.

(b) [Reserved]

Dated: July 15, 1996.

George T. Frampton, Jr.

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–19959 Filed 8–6–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AD90

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—1997–1998 Subsistence Taking of Fish and Wildlife Regulations

AGENCY: Forest Service, Agriculture; and Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the customary and traditional use determinations and establish regulations for hunting and trapping seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses during the 1997–1998 regulatory year. This rule making is necessary because Subpart D regulations require annual public review, and the customary and traditional use determinations are also open to the same annual regulatory revision process. When final, this rule making will replace hunting and trapping regulations and modify customary and traditional use determinations in ''Subsistence Management Regulations for Public Lands in Alaska, Subparts C and D—1996–1997 Subsistence Taking of Fish and Wildlife Regulations,'' which expire on June 30, 1997.

DATES: Written public comments and proposals to change this proposed rule must be received no later than October 25, 1996. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change regulations contained in this proposed rule from September 9–October 25, 1996, at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for additional information on meetings and written comment procedures.

ADDRESSES: Comments and proposals should be sent to Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management; telephone (907) 786–3864. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628, telephone (907) 586–7921.

SUPPLEMENTARY INFORMATION:

Meeting Locations and Written Comment Procedures

The meetings on this proposed rule will be held at the following locations in Alaska:

Southeast Regional Council—Kake
Southcentral Regional Council—Glenallen
Kodiak/Aleutians Regional Council—Unalaska
Bristol Bay Regional Council—Togiak
Yokon-Kuskokwim Delta Regional Council—Akiachak
Western Interior Regional Council—Galena
Seward Peninsula Regional Council—Teller
Northwest Arctic Regional Council—Kotzebue
Eastern Interior Regional Council—Stevens Village
North Slope Regional Council—Barrow

Notice of specific dates, times, and meeting locations will be published in local and statewide newspapers prior to the meetings. Locations and dates may need to be changed based on weather or local circumstances. Length of the Regional Council meetings will be determined by the amount or work on each Regional Council's agenda. Written proposals to change Subpart D hunting and trapping regulations and customary and traditional use determinations in Subpart C will be compiled and distributed for additional public review during early November 1996. A second 30-day public comment period will follow distribution of the compiled proposal packet. Written public comments on distributed proposals will be accepted during the second pubic comment period. Comments on published proposals to change hunting and trapping and customary and traditional use determination regulations may be presented to the Regional Councils at their winter meetings; locations, dates, and times to be announced. The Federal Subsistence Board (Board) will deliberate and take final action on proposals received that request changes to this proposed rule at a public meeting to be held in Anchorage during April 1997.

Proposed Changes from 1996–1997 Seasons and Bag Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each

year. Customary and traditional use determinations are also subject to an annual review process providing for modification each year. Regulations contained in this proposed rule will take effect on July 1, 1997, unless elements are changed by subsequent Board action following the public review process outlined herein.

The text of the 1996–1997 Subparts C and D Final Rule served as the foundation for the 1997–1998 Subparts C and D proposed rule. No changes to the 1996–1997 Final Rule have been made for the 1997–1998 regulatory year.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability which are consistent with ANILCA, and which provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute, and therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the Federal Register (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, a Federal Subsistence Board was established to administer the Federal subsistence management program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Area Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies have participated in development of regulations for Subparts A, B, and C, and the annual Subpart D regulations. All Board members have reviewed this proposed rule and agree with its substance. Because this proposed rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR Part 242 and 50 CFR Part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR §§ 100.1 through 100.23 and 36 CFR § § 242.1 through 242.23, remain effective and apply to this rule for § § ____.24 and ____.25. Therefore, all definitions located at 50 CFR § 100.4 and 36 CFR § 242.4 apply to regulations found in this subpart. The identified sections include definitions for the following terms:

''*Federal lands* means lands and waters and interests therein title to which is in the United States''; and

''*public land* or *public lands* means lands situated in Alaska which are Federal lands, except—

(1) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal Law;

(2) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) lands referred to in Section 19(b) of the Alaska Native Claims Settlement Act.''

Navigable Waters

At this time, Federal subsistence management program regulations apply to all non-navigable waters located on public lands and to navigable waters located on the public lands identified at 50 CFR § 100.3(b) and 36 CFR § 242.3(b) of the Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964) published May 29, 1992. Nothing in these regulations is intended to enlarge or diminish authorities of the Departments to manage submerged lands, title to which is held by the United States government.

The Board recognizes Judge Holland's order granting preliminary relief to the plaintiffs in the case of the *Native Village of Quinhagak et al* v. *United States of America et al.* Therefore, to the extent that the proposed regulations would continue any existing restrictions on the taking of rainbow trout by the residents of Quinhagak and Goodnews Bay in the Kanetok, Arolik, and Goodnews Rivers, those regulations will not be enforced pending completion of proceedings in that case. However, in light of the continuation of the proceedings in the consolidated ''Katie John'' litigation and a petition to the Secretaries of the Interior and Agriculture addressing jurisdiction in navigable waters, no attempt is being made to alter the fish and shellfish portions of the regulations (Sections ____.26 and ____.27) until final guidance has been received regarding the jurisdictional authority of the Federal government over navigable waters in general, and specifically with respect to the waters at issue in *Native Village of Quinhagak et al.* v. *United States of America et al.*

Public Review Process—Regulation Comments, Proposals, and Public Meetings

Written comments or proposed regulation changes may be submitted in writing to the address identified at the beginning of this rulemaking by October 25, 1996. Comments or proposals may also be presented at Regional Council meetings to be held from September 9–October 25, 1996.

Proposals should be specific to customary and traditional use determinations or to subsistence hunting and trapping seasons, harvest limits, and/or methods and means. Proposals submitted to the Board should include, at minimum, the following information:

a. The name, address, and telephone number of the individual or organization submitting the proposal;

b. The section and/or paragraph of the proposed rule for which the change is being suggested;

c. A statement explaining why the change is necessary;

d. A proposed solution;

e. Suggested wording for the regulation addition or change; and

f. Any supporting information.

Proposals which fail to include the above information, or proposals which are beyond the scope of authorities in Section ____.24, Subpart C and Section ____.24, Subpart D, may be rejected. Proposals for changes relating to fish or shellfish regulations, and changes to the overall program will *not* be considered by the board at this time. Fish and shellfish regulations were extended

through December 31, 1997, pending further development of a separate rulemaking process resulting from the consolidated ''Katie John'' litigation and petitions to the Secretaries regarding extended jurisdiction. See Subsistence Management Regulations for Public Lands in Alaska, Identification of Waters Subject to Subsistence Priority Regulation and Expansion of the Federal Subsistence Program and the Federal Subsistence Board's Authority published April 4, 1996 (61 FR 15014).

The public is encouraged to use standardized proposal forms to submit recommendations to the Board. Proposal forms may be obtained from the U.S. Fish and Wildlife Service at the address listed above. The Board may defer review and action on some proposals if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council, staff members and on the basis of least harm to the subsistence user.

Following public distribution of proposals for changes to the 1977–1988 proposed regulations, a second comment period will be provided to allow public review of those proposals that will be considered by the Board. A second series of Regional Council meetings will be held in February 1977, to assist in developing recommendations to the Board. Written comments on proposals may be submitted to the U.S. Fish and Wildlife Service before conclusion of the second comment period which is presently scheduled to end on January 6, 1997. The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage, April 1997. The public may provide additional oral testimony on specific proposals before the Board at that time.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR § 242.11 (1992) and 50 CFR 100 § 242.11 (1992), and for the purposes identified therein, Alaska has been divided into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in April 1997.

Summary of Changes

This proposed rule contains no changes from the Final 1996–1997 Subsistence Management Regulations for Alaska.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance—A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture—Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implements the Federal Subsistence Management Program and includes a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance with Section 810 of ANILCA—The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appears in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

Paperwork Reduction Act—This rule contains information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. The information collection requirements described below have been submitted to OMB for extension approval. This collection of information will not be required until it has been approved by OMB.

The collection of information will be achieved through the use of the Federal Subsistence Hunt Permit Application. This collection information will establish whether the applicant qualifies to participate in a Federal subsistence hunt on public land in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence hunts on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy wildlife populations. The annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 5,000, yielding a total annual reporting and recordkeeping burden of 1,250 hours or less.

Direct comments on the burden estimate or any other aspect of this form

to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), Washington, DC 20503. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects

This rule was not subject to OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, it is estimated that 2 million pounds of meat are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound, would equate to $6 million State wide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

The Departments have determined and certify pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or state governments or private entities.

Drafting Information—These regulations were drafted by William Knauer under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Peggy Fox, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; John Borbridge, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, are proposed to be amended as set forth below.

PART_____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 is proposed to continue to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

2. In Subpart C of 36 CFR part 242 and 50 CFR part 100, § __.24 is revised to read as follows:

§ _____.24 Customary and traditional use determinations.

(a) Rural Alaska residents of the listed communities and areas have been determined to have customary and traditional subsistence use of the specified species on Federal public lands in the specified areas. When there is a determination for specific communities or areas of residence in a Unit, all other communities not listed for that species in that Unit have no Federal subsistence for that species in that Unit. If no determination has been made for a species in a Unit, all rural Alaska residents are eligible to harvest fish or wildlife under this Part.

Area	Species	Determination
(1) Wildlife determinations		
Unit 1(C)	Black Bear	Rural residents of Unit 1(C) and Haines, Gustavus, Klukwan, and Hoonah.
1(A)	Brown Bear	Rural residents of Unit 1(A) except no subsistence for residents of Hyder.
1(B)	Brown Bear	Rural residents of Unit 1(A), Petersburg, and Wrangell, except no subsistence for residents of Hyder.
1(C)	Brown Bear	Rural residents of Unit 1(C), Haines, Hoonah, Klukwan, Skagway, and Wrangell, except no subsistence for residents of Gustavus.
1(D)	Brown Bear	Residents of 1(D).
1(A)	Deer	Rural residents of 1(A) and 2.
1(B)	Deer	Rural residents of Unit 1(A), residents of 1(B), 2 and 3.
1(C)	Deer	Rural residents of 1 (C) and (D), and residents of Hoonah and Gustavus.
1(D)	Deer	No subsistence.
1(B)	Goat	No determination, except no subsistence for residents of Petersburg, Kupreanof and outlying areas.
1(C)	Goat	Residents of Haines, Klukwan, and Hoonah.

Area	Species	Determination
1(B) The Stikine River drainages only.	Moose	No determination.
1(B) North of the LeConte Glacier and 1(C) Berner's Bay.	Moose	No subsistence.
1(D)	Moose	Residents of Unit 1(D).
Unit 2	Brown Bear	No subsistence.
2	Deer	Rural residents of Unit 1(A) and residents of Units 2 and 3.
Unit 3	Deer	Residents of Unit 1(B) and 3, and residents of Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
Unit 4	Brown Bear	Residents of Unit 4 and Kake.
4	Deer	Residents of Unit 4 and residents of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, Wrangell, and Yakutat.
4	Goat	Residents of Sitka, Hoonah, Tenakee, Pelican, Funter Bay, Angoon, Port Alexander, and Elfin Cove.
Unit 5	Brown Bear	Residents of Yakutat.
5	Deer	Residents of Yakutat.
5	Moose	Residents of Unit 5(A).
Unit 6(A)	Black Bear	Residents of Yakutat and residents of 6(C) and 6(D), except no subsistence for Whittier.
6, Remainder	Black Bear	Residents of Unit 6(C) and 6(D), except no subsistence for Whittier.
6	Brown Bear	No subsistence.
6 (C) and (D)	Goat	Rural residents of Unit 6 (C) and (D).
6	Moose	No subsistence.
6	Wolf	Residents of Units 6, 9, 10, (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 7	Brown Bear	No subsistence.
7	Caribou	No subsistence.
7, Brown Mountain hunt area	Goat	Residents of Port Graham and English Bay.
7	Moose	No subsistence.
7	Sheep	No subsistence.
Unit 8	Brown Bear	Residents of Old Harbor, Akhiok, Larsen Bay, Karluk, Ouzinkie, and Port Lions.
8	Deer	Residents of Unit 8.
8	Elk	No subsistence.
8	Goat	No subsistence.
Unit 9(D)	Bison	No subsistence.
9 (A), (C) and (D)	Brown Bear	No subsistence.
9(B)	Brown Bear	Residents of Unit 9(B).
9(E)	Brown Bear	Residents of Chignik Lake, Ivanof Bay and Perryville.
9(A) and (B)	Caribou	Residents of Units 9(B), 9(C) and 17.
9(C)	Caribou	Residents of Unit 9(B), 9(C), 17 and residents of Egegik.
9(D)	Caribou	Residents of Unit 9(D), and residents of False Pass.
9(E)	Caribou	Residents of Units 9 (B), (C), (E), 17, and residents of Nelson Lagoon and Sand Point.
9 (A), (B), (C) and (E)	Moose	Residents of Unit 9 (A), (B), (C) and (E)
9(D)	Moose	No subsistence.
9(B)	Sheep	Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth.
9 Remainder	Sheep	No determination.
9	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 10 Unimak Island	Caribou	Residents of False Pass.
10 Remainder	Caribou	No determination.
10	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 11	Bison	No subsistence.
11	Brown Bear	No subsistence.
11	Caribou	Mentasta Herd—residents of Units 11, 12 (along Nabesna Road) and 13 (A)–(D) and the residents of Chickaloon.
11	Goat	No subsistence.
11	Moose	Residents of Unit 11, residents of Unit 12 (along Nabesna Road) and Unit 13 (A)–(D) and the residents of Chickaloon.
11	Sheep	Residents of communities and areas of Chisana, Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina and Tonsina; Residents along the Tok Cutoff—Milepost 79–110 (Mentasta Pass), residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road). However, no subsistence for the communities and areas of Cantwell, Lake Louise, Paxson, North Slana Homestead, South Slana Homestead, Sourdough, Tanacross, Tok; residents along the Lake Louise Road—Milepost 0–14; residents on the Glenn Highway—Milepost 78–180 (east Glenn Highway and west Glenn Highway).

Area	Species	Determination
11	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
11	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon 15, 16, 20(D), 22 and 23.
11	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon 15, 16, 20(D), 22 and 23.
Unit 12	Brown Bear	No subsistence.
12	Caribou–Nelchina Herd	Residents of Northway and Tetlin.
12	Caribou–40 Mile Herd	Residents of Unit 12, north of Wrangell–St. Elias National Park and Preserve and rural residents of Unit 20 (D) and (E).
12 South of a line from Noyes Mountain, southeast of the confluence of Tatschunda Creek to Nabesna River.	Moose	Residents of Unit 11 north of 62nd parallel (excluding North Slana Homestead and South Slana Homestead); and residents of Unit 12, 13 (A)–(D) and the residents of Chickaloon and residents of Dot Lake.
12 East of the Nabesna River, south of the Winter Trail from Pickerel Lake to the Canadian Border.	Moose	Residents of Unit 12.
12 Remainder of Unit 12	Moose	Residents of Unit 12 and residents of Dot Lake and Mentasta Lake.
12, Tok Management area	Sheep	No subsistence.
12 Remainder of Unit 12	Sheep	No determination.
12	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 13	Brown Bear	No subsistence.
13	Caribou Nelchina Herd	Residents of Units 11, 13 and the residents of Chickaloon, and 12 (along Nabesna Road).
13(E)	Caribou	Residents of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters)
13(D)	Goat	No subsistence.
13	Moose	Residents of Unit 13 and the residents of Chickaloon.
13(E)	Moose	Residents of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13 Tok and Delta Management Areas.	Sheep	No subsistence.
13(D)	Sheep	No subsistence.
13	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and residents of Chickaloon, and 16–26.
13	Grouse (Spruce, Blue, Ruffed & Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
13	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
Unit 14 (B) and (C)	Brown Bear	No subsistence.
14	Goat	No subsistence.
14	Moose	No subsistence.
14 (A) and (C)	Sheep	No subsistence.
Unit 15(C)	Black Bear	Residents of Port Graham and Nanwalek only.
15 Remainder	Black Bear	No subsistence.
15	Brown Bear	No subsistence.
15(C), Port Graham and English Bay hunt areas.	Goat	Residents of Port Graham and English Bay.
15(C), Seldovia hunt area	Goat	Residents Seldovia area.
15(A)	Moose	No subsistence.
15 (B) and (C)	Moose	Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia.
15	Sheep	No subsistence.
15	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
15	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 16	Brown Bear	No subsistence.
16(A)	Moose	No subsistence.
16(B)	Moose	Residents of Unit 16(B).
16	Sheep	No subsistence.
16	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
16	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
16	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 17(A)	Brown Bear	Residents of Unit 17, and residents of Goodnews Bay and Platinum.

Area	Species	Determination
17 (A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Brown Bear	Residents of Kwethluk.
17 (B) and (C)	Brown Bear	Residents of Unit 17.
17	Caribou	Residents of Units 9(B), 17 and residents of Lime Village and Stony River.
17 (A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Caribou	Residents of Kwethluk.
17 (A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Moose	Residents of Kwethluk.
17(A)	Moose	Residents of Unit 17 and residents of Goodnews Bay and Platinum.
17 (B) and (C)	Moose	Residents of Unit 17, and residents of Nondalton, Levelock, Goodnews Bay and Platinum.
17	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 18	Black Bear	Residents of Unit 18, residents of Unit 19(A) living downstream of the Holokuk River, and residents of Chuathbaluk, Aniak, Lower Kalskag, Holy Cross, Stebbins, St. Michael, and Togiak.
18	Brown Bear	Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Mary's, and Tuluksak.
18	Caribou (Kilbuck caribou herd only).	INTERIM DETERMINATION BY FEDERAL SUBSISTENCE BOARD (12/18/91): residents of Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaskiak, Napakiak, Kasigluk, Atmanthluak, Nunapitchuk, Tuntutliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills.
18 North of the Yukon River	Caribou (except Kilbuck caribou herd).	Residents of Alakanuk, Andreafsky, Chevak, Emmonak, Hooper Bay, Kotlik, Kwethluk, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's, St. Michael, Scammon Bay, Sheldon Point, and Stebbins.
18 Remainder	Caribou (except Kilbuck caribou herd).	Residents of Kwethluk.
18	Moose	Residents of Unit 18 and residents of Upper Kalskag.
18	Muskox	No subsistence.
18	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 19 (C), (D)	Bison	No subsistence.
19(A)	Brown Bear	Residents of Unit 19 (A), (D), and residents of Tuluksak, Lower Kalskag and Kwethluk.
19(B)	Brown Bear	Residents of Kwethluk.
19(C)	Brown Bear	No subsistence.
19(D)	Brown Bear	Residents of Unit 19 (A) and (D), and residents of Tulusak and Lower Kalskag.
19 (A) and (B)	Caribou	Residents of Unit 19 (A) and (B) and Kwethluk; and residents of Unit 18 in Kuskokwim Drainage and Kuskokwim Bay during the winter season.
19(C)	Caribou	Residents of Unit 19(C), and residents of Lime Village, McGrath, Nikolai, and Telida.
19(D)	Caribou	Residents of Unit 19(D), and residents of Lime Village, Sleetmute and Stony River.

Area	Species	Determination
19 (A) and (B)	Moose	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and Unit 19.
19(C)	Moose	Residents of Unit 19.
19(D)	Moose	Residents of Unit 19 and residents of Lake Minchumina.
19	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 20(D)	Bison	No subsistence.
20(E)	Brown Bear	No subsistence.
20 (A), (C) (Delta, Yanert, and 20(C) herds) and (D).	Caribou	No determination, except no subsistence for residents of households of the Denali National Park Headquarters.
20(D) and 20(E)	Caribou 40-Mile Herd	Residents of Unit 12 north of Wrangell Park-Preserve, rural residents of 20(D) and residents of 20(E).
20(A)	Moose	Residents of Cantwell, Minto, and Nenana, McKinley Village, the area along the Parks Highway between mileposts 216 and 239, except no subsistence for residents of households of the Denali National Park Headquarters.
20(B)	Moose	Minto Flats Management Area—residents of Minto and Nenana.
20(B)	Moose	Remainder—rural residents of Unit 20(B), and residents of Nenana and Tanana.
20(C)	Moose	Rural residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), and residents of Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300–309, Nikolai, Tanana, Telida, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239. No subsistence for residents of households of the Denali National Park Headquarters.
20(D)	Moose	Rural residents of Unit 20(D) and residents of Tanacross.
20(F)	Moose	Residents of Unit 20(F), Manley, Minto and Stevens Village.
20 Tok and Delta Management Areas.	Sheep	No subsistence.
20	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
20(D)	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
20(D)	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 21	Brown Bear	Rural residents of Unit 21 and 23.
21	Caribou, Western Arctic Caribou Herd only.	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of 23 and 24.
21 (A) and (E)	Caribou	Residents of Unit 21(A) and Aniak, Chuathbaluk, Crooked Creek, Grayling, Holy Cross, McGrath, Shageluk and Takotna.
21(A)	Moose	Residents of Unit 21 (A), (E), Takotna, McGrath, Aniak and Crooked Creek.
21 (B) and (C)	Moose	Residents of Unit 21 (B) and (C), residents of Tanana and Galena.
21(D)	Moose	Residents of Unit 21(D), and residents of Huslia and Ruby.
21(E)	Moose	Residents of Unit 21(E) and residents of Russian Mission.
21	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 22	Brown Bear	Residents of Unit 22.
22(A)	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24, and residents of Kotlik, Emmonak, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's, Sheldon Point, and Alakanuk.
22 Remainder	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24.
22D	Moose	Residents of Unit 22.
22(B)	Muskox	Residents of Unit 22(B).
22(C)	Muskox	Residents of Unit 22(C).
22(D)	Muskox	Residents of Unit 22(D) excluding St. Lawrence Island.
22(E)	Muskox	Residents of Unit 22(E) excluding Little Diomede Island.
22D	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
22	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
22	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 23	Brown Bear	Rural residents of Units 21 and 23.
23	Caribou Western Arctic Caribou Herd only.	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Unit 23, 24, and 26(A).
23, south of Kotzebue Sound and west of, and including, the Buckland River drainage.	Caribou Western Arctic Caribou Herd only.	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Unit 22 (except residents of St. Lawrence Island), 23, 24, and 26(A).

Area	Species	Determination
23 Remainder	Caribou other than the Western Arctic Caribou Herd.	No determination.
23	Moose	Residents of Unit 23.
23 South of Kotzebue Sound and west of and including the Buckland River drainage.	Muskox	Residents of Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage.
23 Remainder	Muskox	No subsistence.
23	Sheep	Residents of Unit 23 north of the Arctic Circle.
23	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
23	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
23	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 24	Brown Bear	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24	Moose	Residents of Unit 24, and residents of Anaktuvuk Pass, Koyukuk and Galena.
24	Sheep	Residents of Unit 24 residing north of the Arctic Circle and residents of Allakaket, Alatna and Anaktuvuk Pass.
24	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 25	Brown Bear	No subsistence.
25(A)	Moose	Residents of Units 25(A) and 25(D).
25(D) West	Moose	Residents of Beaver, Birch Creek and Stevens Village.
25(D) Remainder	Moose	Residents of Remainder of Unit 25.
25(A)	Sheep	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik and Venetie.
25 (B) and (C)	Sheep	No subsistence.
25	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 26	Brown Bear	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Anaktuvuk Pass and Point Hope.
26(A)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass and Point Hope.
26(B)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass and Point Hope, and Wiseman.
26(C)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass and Point Hope.
26	Moose	Residents of Unit 26, (except the Prudhoe Bay-Deadhorse Industrial Complex), and residents of Point Hope and Anaktuvuk Pass.
26(A)	Muskox	Residents of Anaktuvuk Pass, Atqasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright.
26(B)	Musk Oxen	Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik.
26(C)	Musk Oxen	Residents of Kaktovik.
26 (A) and (B)	Sheep	Residents of Anaktuvuk Pass, Kaktovik, Nuiqsut and Wiseman.
26(C)	Sheep	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik, Nuiqsut and Venetie.
26	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.

(2) Fish and shellfish determinations

KOTZEBUE-NORTHERN AREA—Northern District.	All finfish	Residents of the Northern District, except for those domiciled in State of Alaska Unit 26-B.
Kotzebue District	Salmon, sheefish, char	Residents of the Kotzebue District.
NORTON SOUND—PORT CLARENCE AREA.	Salmon	Residents of the Norton Sound-Port Clarence Area.
YUKON AREA	Salmon	Residents of the Yukon Area, including the community of Stebbins.
	Yukon River Fall chum salmon	Residents of the Yukon River drainage, including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
	Freshwater fish species, including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, char, and blackfish.	Residents of the Yukon Area.
KUSKOKWIM AREA	Salmon	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
	Rainbow trout	Residents of the communities of Quinhagak, Goodnews Bay, Kewthluk, Eek, Akiak, and Platinum.
	Pacific cod	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.

Area	Species	Determination
Waters adjacent to the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and around Nunivak Island.	Herring and herring roe	Residents within 20 miles of the coast between the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and on Nunivak Island.
BRISTOL BAY AREA—Nushagak District, including drainages flowing into the district.	Salmon	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichek District—Naknek River drainage.	Salmon	Residents of the Naknek and Kvichak River drainages.
Naknek-Kvichek District—Iliamna-Lake Clark drainage.	Salmon	Residents of the Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and other freshwater finfish.	Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.
KODIAK AREA—except the Mainland District, all waters along the southside of the Alaska Peninsula bounded by the latitude of Cape Douglas (58° 52′ North latitude) midstream Shelikof Strait, and west of the longitude of the southern entrance of Kmuya Bay near Kilokak Rocks (57°11′22″ North latitude, 156°20′30″ W longitude).	Salmon	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
KODIAK AREA—except the Semidi Island, the North Mainland, and the South Mainland Sections.	King crab	Residents of the Kodiak Island Borough except those residents on the Kodiak Coast Guard base.
COOK INLET AREA—Port Graham Subdistrict.	Dolly Varden	Residents of Port Graham and English Bay.
Port Graham Subdistrict and Koyuktolik Subdistrict.	Salmon	Residents of Port Graham and English Bay.
Tyonek Subdistrict	Salmon	Residents of the village of Tyonek.
PRINCE WILLIAM SOUND AREA—South-Western District and Green Island.	Salmon	Residents of the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
PRINCE WILLIAM SOUND AREA—North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon	Residents of the villages of Tatitlek and Ellamar.
YAKUTAT AREA—Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Freshwater upstream from the terminus of steams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden char, steelhead trout, and smelt.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
SOUTH-EASTERN ALASKA AREA—District 1—Section 1–E in waters of the Naha River and Roosevelt Lagoon.	Salmon and Dolly Varden char	Residents of the City of Saxman.
District 1—Section 1–F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon and Dolly Varden	Residents of the City of Saxman
District 2—North of the latitude of the northern-most tip of Chasina Point and west of a line from the northern-most tip of Chasina Point to the eastern-most tip of Grindall Island to the eastern-most tip of the Kasaan Peninsula.	Salmon and Dolly Varden char	Residents of the City of Kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132°20′ W. long. and east of 132°25′ W. long.
District 3—Section 3–A	Salmon and Dolly Varden char	Residents of the townsite of Hydaburg.

Area	Species	Determination
District 3—Section 3–B in waters east of a line from Point Ildefonso to Tranquil Point.	Salmon and Dolly Varden char, and steelhead trout.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 3—Section 3–C in waters of Sarkar Lakes.	Salmon and Dolly Varden and steelhead trout.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 5—North of a line from Point Barrie to Boulder Point.	Salmon and Dolly Varden char	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–A	Salmon and Dolly Varden char	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–B north of the latitude of Swain Point.	Salmon and Dolly Varden char	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon and Dolly Varden char	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon and Dolly Varden char	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134° 30′ W. long., including Killisnoo Island.
District 13—Section 13–A south of the latitude of Cape Edward.	Sockeye salmon	Residents of the City and Borough of Sitka in drainages which empty into Section 13-B north of the latitude of Dorothy Narrows.
District 13—Section 13–B north of the latitude of Redfish Cape.	Sockeye salmon	Residents of the City and Borough of Sitka in drainages which empty into Section 13-B north of the latitude of Dorothy Narrows.
District 13—Section 13–C	Sockeye salmon	Residents of the City and Borough of Sitka in drainages which empty into Section 13-B north of the latitude of Dorothy Narrows.
District 13—Section 13–C east of the longitude of Point Elizabeth.	Salmon and Dolly Varden char	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134° 30′ W. long., including Killisnoo Island.
District 14—Section 14–B and 14–C.	Salmon, smelt and Dolly Varden char.	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.
District 15—Chilkat and Chilkoot Rivers.	Salmon and smelt	Residents west of the Haines highway between Mile 20 and Mile 24 and east of the Chilkat River, Haines, excluding residents in the drainage of Excursion Inlet.

(b) [Reserved]

3. In Supart D of 36 CFR 36 part 242 and 50 CFR part 100, § ____.25 is proposed to be revised to read as follows:

Subpart D—Subsistence Taking of Fish and Wildlife

§ ____.25 Subsistence taking of wildlife.

(a) Definitions. The following definitions shall apply to all requlations contained in this section.

ADF&G means the Alaska Department of Fish and Game.

Aircraft means any kind of airplane, glider, or other device used to transport people or equipment through the air, excluding helicopters.

Airport means an airport listed in the Federal Aviation Administration, Alaska Airman's Guide and chart supplement.

Animal means those species with a vertebral column (backbone).

Antler means one or more solid, horn-like appendages protruding from the head of a caribou, deer, or moose.

Antlered means any caribou, deer, or moose having at least one visible antler.

Anterless means any caribou, deer, or moose not having visible antlers attached to the skull.

Bear means black bear, or brown or grizzly bear.

Bow means a longbow, recurve bow, or compound bow, excluding a crossbow, or any bow equipped with a mechanical device that holds arrows at full draw.

Broadhead means an arrowhead that is not barbed and has two or more steel cutting edges having a minimum cutting diameter of not less than seven-eights inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

Buck means any male deer.

Bull means any male moose, caribou, or musk oxen.

Closed season means the time when wildlife may not be taken.

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Designated hunter means a Federally qualified, licensed hunter who may take all or a portion of another Federally qualified, licenses hunter's harvest limit(s) only under situations approved by the Board.

Edible meat means the breast meat of ptarmigan and grouse, and, those parts of black bear, brown and grizzly bear, caribou, deer, mountain goat, moose, musk oxen, and Dall sheep that are typically used for human consumption which are: the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (elbow), hindquarters as far as the distal joint (bottom) of the tibia-fibula (hock) and that portion of the animal between

the front and hindquarters; however, *edible meat* of species listed above does not include: meat of the head, meat that has been damaged and made inedible by the method of taking, bones, sinew, and incidental meat reasonably lost as a result of boning or close trimming of the bones, or viscera.

Federally-qualified subsistence user means a rural Alaska resident qualified to harvest fish or wildlife on Federal public lands in accordance with the Federal Subsistence Management Regulations in this part.

Fifty-inch (50-inch) moose means a bull moose with an antler spread of 50 inches or more.

Full curl horn means the horn of a Dall sheep ram; the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken, or that the sheep is at least 8 years of age as determined by horn growth annuli.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, ground squirrel, marmot, wolf or wolverine.

Grouse collectively refers to all species found in Alaska, including spruce grouse, ruffed grouse, blue grouse and sharp-tailed grouse.

Hare or hares collectively refers to all species of hares (commonly called rabbits) in Alaska and includes snowshoe hare and tundra hare.

Harvest limit means the number of any one species permitted to be taken by any one person in a Unit or portion of a Unit in which the taking occurs.

Highway means the driveable surface of any constructed road.

Household means that group of people residing in the same residence.

Hunting means the taking of wildlife within established hunting seasons with archery equipment or firearms, and as authorized by a required hunting license.

Marmot collectively refers to all species of marmot that occur in Alaska including the hoary marmot, Alaska marmot, and the woodchuck.

Motorized vehicle means a motor-driven land, air or water conveyance.

Open season means the time when wildlife may be taken by hunting or trapping; an open season includes the first and last days of the prescribed season period.

Otter means river or land otter only, excluding sea otter.

Permit hunt means a hunt for which State or Federal permits are issued by registration or other means.

Poison means any substance which is toxic, or poisonous upon contact or ingestion.

Possession means having direct physical control of wildlife at a given time or having both the power and intention to exercise dominion or control of wildlife either directly or through another person or persons.

Ptarmigan collectively refers to all species found in Alaska, including white-tailed ptarmigan, rock ptarmigan, and willow ptarmigan.

Ram means a male Dall sheep.

Registration permit means a permit which authorizes hunting and is issued to a person who agrees to the specified hunting conditions. Hunting permitted by a registration permit begins on an announced date and continues throughout the open season, or until the season is closed by Board action. Registration permits are issued in the order applications are received and/or are based on priorities as determined by 50 CFR 100.17 and 36 CFR 242.17.

Sealing means placing a mark or tag on a portion of a harvested animal by an authorized representative of the ADF&G; *sealing* includes collecting and recording information about the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing, or surrendering a specific portion of the animal for biological information.

Seven-eighths curl horn means the horn of a male Dall sheep, the tip of which has grown through seven-eights (315 degrees) of a circle, described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Skin, hide, pelt or fur mean any tanned or untanned external covering of an animal's body; excluding bear. The skin, hide, fur or pelt of a bear shall mean the entire external covering with claws attached.

Spike-fork moose means a bull moose with only one or two tines on either antler; male calves are not spike-fork bulls.

Take or *Taking* means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Tine or *antler point* refers to any point on an antler, the length of which is greater than its width and is at least one inch.

Transportation means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

Trapping means the taking of furbearers within established trapping seasons and with a required trapping license.

Unclassified wildlife or unclassified species means all species of animals not otherwise classified by the definitions herein, or regulated under other Federal law as listed in paragraph 25(i) of this section.

Ungulate means any species of hoofed mammal, including deer, caribou, moose, mountain goat, Dall sheep, and musk oxen.

Unit means one of the 26 geographical areas in the State of Alaska known as Game Management Units, or GMU, and collectively listed in this section 25 as Units.

Wildlife means any hare (rabbit), ptarmigan, grouse, ungulate, bear, furbearer, or unclassified species and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Wildlife may be taken for subsistence uses by any method, except as prohibited in this section or by other Federal statute. Taking wildlife for subsistence uses by a prohibited method is a violation of this part. Seasons are closed unless opened by Federal regulation. Hunting or trapping during a closed season or in an area closed by this part is prohibited.

(1) Except for special provisions found at paragraphs 25(k)(1) through (26) of this section, the following methods and means of taking wildlife for subsistence uses are prohibited:

(i) Shooting from, on, or across a highway;

(ii) Using any poison;

(iii) Using a helicopter in any manner, including transportation of individuals, equipment or wildlife; however, this prohibition does not apply to transportation of an individual, gear, or wildlife during an emergency rescue operation in a life threatening situation;

(iv) Taking wildlife from a motorized land or air vehicle, when that vehicle is in motion or from a motor-driven boat when the boat's progress from the motor's power has not ceased;

(v) Using a motorized vehicle to drive, herd, or molest wildlife;

(vi) Using or being aided by use of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) Using a firearm other than a shotgun, muzzle-loaded rifle, rifle or pistol using center-firing cartridges, for the taking of ungulates, bear, wolves or wolverine, except that—

(A) An individual in possession of a valid trapping license may use a firearm that shoots rimfire cartridges to take wolves and wolverine;

(B) Only a muzzle-loading rifle of .54-caliber or larger, or a .45-caliber muzzle-loading rifle with a 250-grain, or larger, elongated slug may be used to take brown bear, black bear, moose, musk oxen and mountain goat;

(viii) Using or being aided by use of a pit, fire, artificial light, radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, conventional steel trap with a jaw spread over nine inches, or conibear style trap with a jaw spread over 11 inches;

(ix) Using a snare, except that an individual in possession of a valid hunting license may use nets and snares to take unclassified wildlife, ptarmigan, grouse, or hares; and, individuals in possession of a valid trapping license may use snares to take furbearers;

(x) Using a trap to take ungulates or bear;

(xi) Using hooks to physically snag, impale or otherwise take wildlife; however, hooks may be used as a trap drag;

(xii) Using a crossbow in any area restricted to hunting by bow and arrow only to take ungulates, bear, wolf or wolverine;

(xiii) Taking of ungulates, bear, wolf, or wolverine with a bow, unless the bow is capable of casting a ⅞ inch wide broadhead-tipped arrow at least 175 yards horizontally, and the arrow and broadhead together weigh at least one ounce (437.5 grains);

(xiv) Using bait for taking ungulates, bear, wolf, or wolverine; except, bait may be used to take wolves and wolverine with a trapping license, and, bait may be used to take black bears with a hunting license as authorized in Unit-specific regulations at paragraphs (k)(1) through (26) of this section. Baiting of black bears is subject to the following restrictions:

(A) No person may establish a black bear bait station unless he or she first registers the site with ADF&G;

(B) A person using bait shall clearly mark the site with a sign reading ''black bear bait station'' that also displays the person's hunting license number and ADF&G assigned number;

(C) Only biodegradable materials may be used for bait; only the head, bones, viscera, or skin of legally harvested fish and wildlife may be used for bait;

(D) No person may use bait within one-quarter mile of a publicly maintained road or trail;

(E) No person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground, or developed recreational facility;

(F) A person using bait shall remove litter and equipment from the bait station site when hunting is completed;

(G) No person may give or receive remuneration for the use of a bait station, including barter or exchange of goods;

(H) No person may have more than two bait stations with bait present at any one time;

(xv) Taking swimming ungulates, bear, wolves or wolverine;

(xvi) Taking or assisting in the taking of ungulates, bear, wolves, wolverine, or other furbearers before 3:00 a.m. following the day in which airborne travel occurred (except for flights in regularly scheduled commercial aircraft); however this restriction does not apply to subsistence taking of deer;

(xvii) Taking a bear cub or a sow accompanied by cub(s).

(2) Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(3) The following methods and means of trapping furbearers, for subsistence uses pursuant to the requirements of a trapping license are prohibited, in addition to the prohibitions listed at paragraph (b)(1) of this section:

(i) Disturbing or destroying a den, except that any muskrat pushup or feeding house may be disturbed in the course of trapping;

(ii) Disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that firearms may be used in certain Units with established seasons as identified in Unit-specific regulations found in this subpart;

(iv) Taking otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same Unit;

(v) Using a net, or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation, or by landing within one mile of a beaver trap or set used by the transported person;

(vii) Taking or assisting in the taking of furbearers by firearm before 3:00 a.m. on the day following the day on which airborne travel occurred; however, this does not apply to a trapper using a firearm to dispatch furbearers caught in a trap or snare.

(c) Possession and Transportation of Wildlife. (1) Except as specified in paragraph (c)(3)(ii) or (c)(4) of this section, or as otherwise provided, no person may take a species of wildlife in any Unit, or portion of a Unit, if that person's total take of that species already obtained anywhere in the State under Federal and State regulations equals or exceeds the harvest limit in that Unit.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to § __.6(f)(3) or as otherwise provided for by this Part, an animal taken as part of a community harvest limit counts toward every community member's harvest limit for that species taken under Federal or State of Alaska regulations.

(3) Harvest limits. (i) Harvest limits, including those related to ceremonial uses, authorized by this section and bag limits established in State regulations may not be accumulated.

(ii) Wildlife taken by a designated hunter for another person pursuant to this section, counts toward the individual harvest limit of the person for whom the wildlife is taken.

(4) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that a person who has taken a harvest limit for a particular species under a trapping season may take additional animals under the harvest limit specified for a hunting season or vice versa.

(5) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of one brown/grizzly bear per year counts against a one brown/grizzly bear every four regulatory years harvest limit in other Units; an individual may not take more than one brown/grizzly bear in a regulatory year.

(6) A harvest limit applies to the number of animals that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

(7) Unless otherwise provided, any person who gives or receives wildlife shall furnish, upon a request made by a Federal or State agent, a signed statement describing the following: names and addresses of persons who gave and received wildlife, the time and place that the wildlife was taken, and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take wildlife on his or her behalf in accordance with § ____.6, the permit shall be furnished in place of a signed statement.

(8) A rural Alaska resident who has been designated to take wildlife on behalf of another rural Alaska resident in accordance with § ____.6, shall promptly deliver the wildlife to that rural Alaska resident.

(9) No person may possess, transport, give, receive or barter wildlife that was taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(10) Evidence of sex and identity. (i) If substances take of Dall sheep is restricted to a ram, no person may possess or transport a harvested sheep unless both horns accompany the animal.

(ii) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, no person may possess or transport the carcass of an animal taken in that area unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal; however, this paragraph (c)(10)(ii) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(iii) If a moose harvest limit includes an antler size or configuration restriction, no person may possess or transport the moose carcass of its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow tines on one antler shall leave the antlers naturally attached to the unbroken, uncut skull plate; however, this paragraph (c)(10)(11) does not apply to a moose carcass or its parts that have been butchered and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(d) A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify the ADF&G or the agency identified on the collar or marker, when and where the animal was taken. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required; in all cases, any identification equipment must be returned to the ADF&G or to an agency identified on such equipment.

(e) Sealing of bear skins and skulls.

(1) Sealing requirements for bear shall apply to brown bears taken in all Units, except as specified below, and black bears of all color phases taken in Units 1–7, 11–16, and 20.

(2) No person may possess or transport from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State or Federal regulations, except that the skin and skull of a brown bear taken under a registration permit in the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) need not be sealed unless removed from the area.

(3) A person who possesses a bear shall keep the skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; however, this provision shall not apply to brown bears taken within the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) which are not removed from the Management Area or Unit.

(i) In areas where sealing is required by Federal regulations, no person may possess or transport the hide of a bear which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in the Western Alaska Brown Bear Management Ares is removed from the area, it must first be sealed by an ADF&G representative in Bethel, Dillingham, or McGrath; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iii) If the skin or skull of a bear taken in the Northwestern Alaska Brown Bear Management Area is removed from the area, it must be first be sealed by an ADF&G representative in Barrow, Fairbanks, Galena, or Kotzebue; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iv) If the skin or skull of a bear taken in Unit 5 is removed from the area, it must first be sealed by an ADF&G representative in Yakutat; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(v) If the skin or skull of a bear taken in Unit 9(B) is removed from the area, it must first be sealed by an ADF&G representative in Port Alsworth or King Salmon; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(4) No person may falsify any information required on the sealing certification or temporary sealing form provided by the ADF&G in accordance with State regulations.

(f) Sealing of beaver, lynx, marten, otter, wolf, and wolverine. No person may possess or transport from Alaska the untanned skin of a marten taken in Units 1–5, 7, 13(E), and 14–16 or the untanned skin of a beaver, lynx, otter, wolf, or wolverine, whether taken inside or outside the state, unless the skin has been sealed by an authorized representative of ADF&G in accordance with State regulations.

(g) A person who takes a species listed in paragraph (f) of this section but who is unable to present the skin in person, must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF & G for sealing consistent with requirements listed in paragraph (f) of this section.

(h) Utilization of wildlife. (1)No person may use wildlife as food for a dog or furbearer, or as bait, except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a furbearer;

(iii) Squirrels, hares (rabbits), grouse and ptarmigan; however, the breast meat of grouse and ptarmigan may not be used as animal food or bait;

(iv) Unclassified wildlife.

(2) A person taking wildlife for subsistence shall salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel or otter;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in the Western and Northwestern Alaska Brown Bear Management Areas and Units 5 and 9(B) need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide or meat of squirrels, hares (rabbits), marmots, beaver, muskrats, or unclassified wildlife.

(3) Failure to salvage edible meat of ungulates, bear or grouse and ptarmigan is prohibited.

(4) Failure to salvage the edible meat may not be a violation if such failure is caused by circumstances beyond the control of a person, including theft of the harvested wildlife, unanticipated weather conditions, or unavoidable loss to another animal.

(i) The regulations found in this section do not apply to the subsistence taking and use of wildlife regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 927, 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407), and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), or any amendments to these Acts. The taking and use of wildlife, covered by these

Acts, will conform to the specific provisions contained in these Acts, as amended, and any implementing regulations.

(j) Rural residents, non-rural residents, and nonresidents not specifically prohibited by Federal regulations from hunting or trapping on public lands in an area, may hunt or trap on public lands in accordance with the appropriate State regulations.

(k) Unit Regulations. Subsistence taking of unclassified wildlife, all squirrel species, and marmots is allowed in all Units, without harvest limits, for the period of July 1-June 30. Subsistence taking of wildlife outside established Unit seasons, or in excess of the established Unit harvest limits, is prohibited unless otherwise modified by subsequent regulation. Taking of wildlife under State regulations on public lands is permitted, except as otherwise restricted at paragraphs (k) (1) through (26) of this section. Additional Unit-specific restrictions or allowances for subsistence taking of wildlife are identified at paragraphs (k) (1) through (26) of this section.

(1) *Unit 1*. Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point, and all islands in Stephens Passage and Lynn Canal north of Taku Inlet:

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal, excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses;

(B) Unit 1(A)—in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1(B)—the Anan Creek drainage is closed to the taking of black bear;

(D) Unit 1(C):

(*1*) The area within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area, is closed to hunting;

(*2*) The area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier, is closed to the taking of mountain goat;

(vi) In Unit 1 (C), Juneau area, the trapping of furbearers for subsistence uses is prohibited on the following public lands:

(A) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(B) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(C) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(D) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail;

(vii) Unit-specific regulations:

(A) Bait may be used to hunt black bear in Units 1(A), 1(B), and 1(D) between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled;

(C) The taking of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, is authorized in Units 1–5 provided that:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear.	Sept. 1–June 30.

Harvest limits	Open season
Brown Bear:	
1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31. Mar. 15–May 31.
Deer:	
Unit 1(A)—4 antlered deer	Aug. 1–Dec. 31.
Unit 1(B)—2 antlered dear	Aug. 1–Dec. 31.
Unit 1(C)—4 dear; however, antlerless deer may be taken only from Sept. 15–Dec. 31	Aug. 1–Dec. 31.
Goat:	
Unit 1(A)—Revillagigedo Island only	No open season.
Unit 1(B)—that portion north of the Bradfield Canal and the North Fork of the Bradfield River, excluding that portion between LeConte Bay and the North Fork of Bradfield River/Canal. 1 goat by State registration permit only; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1(B)—that portion between LeConte Bay and the North Fork of Bradfield River/Canal. 2 goats; a State registration permit will be required for the taking of the first goat and a Federal registration permit for the taking of a second goat; the taking of kids of nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1(A)—and Unit 1(B)—Remainder—2 goats by State registration permit only	Aug. 1–Dec. 31.
Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River—1 goat by State registration permit only.	Oct. 1–Nov. 31.
Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier, and all drainages of the Chilkat Range south of the Endicott River.	No open season.
Reminder of Unit 1(C)—1 goat by State registration permit only	Aug.1—Nov. 30.
Unit 1(D)—that portion laying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only.	Sept. 15–Nov. 30.
Unit 1(D)—that portion laying between Taiya Inlet and River and the White Pass and Yukon Railroad	No open season.
Remainder of Unit 1(D)—1 goat by State registration permit only	Aug.1—Dec. 31.
Moose:	
Unit 1(A)—1 antlered bull	Sept. 15–Oct. 15.
Unit 1(B)—south and east of LeConte Bay and Glacier—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit.	Sept. 15–Oct. 15.
Reminder of Unit 1(B)	No open season.
Unit 1(C), that portion south of Point Hobart including all Port Houghton drainages—1 antlered bull with spike-fork or 50 inch antlers or 3 or more brow tines on either antler, by State registration permit.	Sept. 15–Oct. 15.
Reminder of Unit 1(C)—excluding drainages of Berners Bay—1 antlered bull by State registration permit only	Sept. 15–Oct. 15.
Unit 1(D)	No open season.
Coyote:	
2 coyotes	Sept. 1—Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1—Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1—Apr. 30.
Lynx:	
2 lynx	Dec. 1—Feb. 15.
Wolf:	
5 wolves	Aug. 1—Apr. 30.
Wolverine:	
1 wolverine	Nov. 10—Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession	Aug. 1—May 15.
Ptarmigan (Rock, Willow, and White-tailed:	
20 per day, 40 in possession	Aug. 1—May 15.
Trapping	
Beaver:	
Unit 1(a), (B), and (C)—No limit	Dec. 1–May 15.
Coyote:	
No limit	Dec. 1—Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.
Martin:	
No limit	Dec. 1–Feb. 15.
Mink and Weasel:	
No limit	Dec. 1–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:	
No limit	Dec. 1–Feb. 15.
Wolf:	
No limit	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30.

(2) *Unit 2.* Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the western most point on Warren Island.

(i) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled;

(C) The taking of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, is authorized in Units 1–5 provided that:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer:	
4 deer; however, no more than one may be an antlerless deer. Antlerless deer may be taken only during the period Oct. 15–Dec. 31.	Aug. 1–Dec. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr. 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver:	
No limit	Dec. 1–May 15.
Coyote:	
No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.
Marten:	
No limit	Dec. 1–Feb. 15.
Mink and Weasel:	
No limit	Dec. 1–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:	
No limit	Dec. 1–Feb. 15.
Wolf:	
No limit	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30.

(3) *Unit 3.* (i) Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Petersburg vicinity, a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to Crystal Lake campground is closed to the taking of ungulates, bear, wolves and wolverine;

(B) The Petersburg Creek drainage on Kupreanof Island is closed to the taking of black bears;

(C) Blind Slough draining into Wrangell Narrows and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge, are closed to all hunting.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled;

(C) The taking of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, is authorized in Units 1–5 provided that:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer:	
Unit 3—Mitkof Island, Woewodski Island, Butterworth Islands, and that portion of Kupreanof Island which includes Lindenburg Peninsula east of the Portage Bay/Duncan Canal Portage—1 antlered deer by State registration permit only; however, the city limits of Petersburg and Kupreanof are closed to hunting.	Oct. 15–Oct. 31.
Remainder of Unit 3—2 antlered deer	Aug. 1–Nov. 30.
Moose:	
Unit 3—Mitkof and Wrangell Islands—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler by State registration permit only.	Sept. 15–Oct. 15.
Remainder of Unit 3	No open season.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr. 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffled, and Sharp-tailed):	
5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver:	
Unit 3—Mitkof Island No limit	Dec. 1–Apr. 15.
Unit 3—except Mitkof Island No limit	Dec. 1–May 15.
Coyote:	
No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.

Harvest limits	Open season
Marten:	
No limit	Dec. 1–Feb 15.
Mink and Weasel:	
No limit	Dec. 1–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:	
No limit	Dec. 1–Feb. 15.
Wolf:	
No limit	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30.

(4) *Unit 4.* (i) Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3 including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lesmesurier, and Pleasant Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Seymour Canal Closed Area (Admiralty Island) including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay including Swan and Windfall Islands, is closed to the taking of bears;

(B) The Salt Lake Bay Closed Area (Admiralty Island) including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay, is closed to the taking of bears;

(C) Port Althorp (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock), is closed to the taking of brown bears;

(D) Northeast Chichagof Controlled Use Area (NECCUA) consisting of all portions of Unit 4 on Chichagof Island north of Tenakee Inlet and east of the drainage divide from the northwest point of Gull Cove to Port Frederick Portage, including all drainages into Port Frederick and Mud Bay, is closed to the use of any motorized land vehicle for brown bear hunting, or for the taking of marten, mink, or weasel.

(iii) Unit-specific regulations:

(A) Boats may not be used to take bear, wolves, or wolverine, except for persons certified as disabled;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(C) The taking of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, is authorized in Units 1–5 provided that:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) Chichagof Island is closed to the use of any motorized land vehicle for the taking of marten, mink, and weasel.

Harvest limits	Open season
Hunting	
Brown Bear:	
Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136°21′ W. long.), to Rodgers Point (57°35′ N. lat., 135°33′ W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57°34′ N. lat., 135°25′ W. long.), to the entrance of Gut Bay (56°44′ N. lat. 134°38′ W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31. Mar. 15–May 31.
Unit 4—that portion in the Northeast Chichagof Controlled Use Area—1 bear every four regulatory years by State registration permit only.	Mar. 15–May 20.
Remainder of Unit 4—1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31. Mar. 15–May 20.
Deer:	
6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31	Aug. 1–Jan. 31.
Goat:	
1 goat by State registration permit only	Aug. 1–Dec. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.

Harvest limits	Open season
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr. 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver:	
Unit 4—that portion east of Chatham Strait—No limit	Dec. 1–May 15.
Remainder of Unit 4	No open season.
Coyote:	
No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.
Marten:	
Unit 4—Chichagof Island—No limit	Dec. 1–Dec. 31.
Remainder of Unit 4—No limit	Dec. 1–Feb. 15.
Mink and Weasel:	
Unit 4—Chichagof Island—No limit	Dec. 1–Dec. 31.
Remainder of Unit 4—No limit	Dec. 1–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:	
No limit	Dec. 1–Feb. 15.
Wolf:	
No limit	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30.

(5) *Unit 5*. (i) Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills:

(A) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5(B) consists of the remainder of Unit 5.

(ii) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled;

(C) Unit 5 is open to brown bear hunting by Federal registration permit in lieu of a State metal locking tag; no State metal locking tag is required for taking a brown bear in Unit 5, provided that the hunter has obtained a Federal registration permit prior to hunting;

(D) The taking of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, is authorized in Units 1–5 provided that:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(E) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer or moose on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Brown Bear:	
1 bear by Federal registration permit only	Sept. 1–May 31.
Deer:	
Unit 5(A)—1 buck	Nov. 1–Nov. 30.
Unit 5(B)	No open season.
Goat:	
1 goat by Federal registration permit only	Aug. 1–Jan. 31.
Moose:	
Unit 5(A), Nunatak Bench—1 moose by State registration permit only. The season will be closed when 5 moose have been taken from the Nunatak Bench.	Nov. 15–Feb. 15.
Unit 5(A), except Nunatak Bench—1 antlered bull by Federal registration permit only. The season will be closed when 60 antlered bulls have been taken from the Unit. The season will be closed in that portion west of the Dangerous River when 30 antlered bulls have been taken in that area. From Oct. 15–Oct. 21, public lands will be closed to taking of moose, except by rural Alaska residents of Unit 5(A).	Oct. 8–Nov. 15.
Unit 5(B)—1 antlered bull by State registration permit only. The season will be closed when 25 antlered bulls have been taken from the entirety of Unit 5(B).	Sept. 1–Dec. 15.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr. 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 1–May 15.
Trapping:	
Beaver:	
No limit	Nov. 10–May 15.
Coyote:	
No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.
Marten:	
No limit	Nov. 10–Feb. 15.
Mink and Weasel:	
No limit	Nov. 10–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:	
No limit	Nov. 10–Feb. 15.
Wolf:	
No limit	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30.

(6) *Unit 6.* (i) Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages:

(A) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla including Kanak, Wingham, and Kayak Islands;

(B) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(D) Unit 6(D) consists of the remainder of Unit 6.

(ii) for the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Goat Mountain goat observation area, which consists of that portion of Unit 6(B) bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River, is closed to the taking of mountain goat;

(B) The Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River, is closed to the taking of mountain goat.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Coyotes may be taken in Units 6(B) and 6(C) with the aid of artificial lights.

Harvest limits	Open season
Hunting	
Black Bear:	
1 Bear	Sept. 1–June 30.
Deer:	
4 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31	Aug. 1–Dec. 31
Goats:	
Unit 6(A), (B)–1 goat by State registration permit only	Aug. 20–Jan. 31.
Unit 6(C)	No open season.
Unit 6(D) (subareas RG242, RG244, RG249, RG266 and RG252 only)—goat by Federal registration permit only. In each of the Unit 6(D) subareas, goat seasons will be closed when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG244—2 goats, RG249—2 goats, RG266—4 goats, RG252—1 goat.	Aug. 20–Jan 31.
Unit 6(D) (subareas RF243 and RG245)—The taking of goats is prohibited on all public lands	No open season.
Coyote:	
Unit 6(A) and (D)–2 coyotes	Sept. 1–Apr. 30.
Unit 6(B)—No limit	July 1–June 30.
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—No limit	July 1–June 30.
Remainder of Unit 6(C)—No limit	July 1–June 30.
FOX, Red (including Cross, Black and Silver Phases)	No open season.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx	No open season.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver:	
Trapping—20 beaver per season	Dec. 1–Mar. 31.
Coyote:	
Unit 6(A), (B) and (D)—No limit	Nov. 10–Mar. 31.
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—No limit	Nov. 10–Apr. 30.
Remainder of Unit 6(C)—No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases);	
No limit	Nov. 10–Feb. 28.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(7) *Unit 7.* (i) Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Kenai Fjords National Park is closed to all subsistence uses;

(B) The Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek and Byron Glacier, is closed to hunting; however, grouse, ptarmigan, hares, and squirrels may be hunted with shotguns after September 1.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15; except Resurrection Creek and its tributaries.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear:	
Unit 7—3 bears	July 1–June 30.
Coyote:	
No limit	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Wolf:	
Unit 7—that portion within the Kenai National Wildlife Refuge—2 wolves	Aug. 10–Apr. 30.
Unit 7—Remainder—5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver:	
20 Beaver per season	Dec. 1–Mar. 31.
Coyote:	
No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–May 15.
Otter:	
No limit	Nov. 10–Feb. 28.
Wolf:	
No limit	Nov. 10–Feb. 28.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(8) *Unit 8.* Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

(i) A firearm may be used to take beaver with a trapping license in Unit 8 from Nov. 10–Apr. 30.

(ii) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Deer:	
Unit 8—that portion of Kodiak Island north of a line from the head of Settlers Cove to Crescent Lake (57°52′ N. lat., 152°58′ W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island east of a line from the mouth of Saltery Creek to the mouth at Elbow Creek, and adjacent small islands in Chiniak Bay—1 deer; however, antlerless deer may be taken only from Oct. 25–Oct. 31.	Aug. 1–Oct. 31.

Harvest limits	Open season
Unit 8—that portion of Kodiak Island and adjacent islands south and west of a line from the head of Terror Bay to the head of the south-western most arm of Ugak Bay—5 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31.	Aug. 1–Dec. 31.
Remainder of Unit 8—5 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31; no more than 1 antlerless deer may be taken from Oct. 1–Nov. 30.	Aug. 1–Dec. 31.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
30 beaver per season	Nov. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Mar. 31.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Jan. 31.

(9) *Unit 9.* (i) Unit 9 consists of the Alaska Peninsula and adjacent islands including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands:

(A) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(B) Unit 9(B) consists of the Kvichak River drainage;

(C) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(D) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(E) Unit 9(E) consists of the remainder of Unit 9.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Katmai National Park is closed to all subsistence uses;

(B) The use of motorized vehicles, excluding aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested animal parts, is prohibited from Aug. 1–Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9(C) within the Naknek River drainage upstream from and including the King Salmon Creek drainage; however, this restriction does not apply to a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp roads and on the King Salmon Creek trail, and on frozen surfaces of the Naknek River and Big Creek;

(C) A firearm may be used under a trapping license to take beaver in Unit 9(B) from April 1–May 31 and in the remainder of Unit 9 from April 1–April 30;

(D) In Unit 9(B), Lake Clark National Park and Preserve only, residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth only, may hunt brown bear by Federal registration permit in lieu of a resident tag; the season will be closed when four females or ten bears have been taken, whichever occurs first;

(E) The taking in Unit 9(B) by residents of Newhalen, Nondalton, Iliamna, Pedro Bay, and Port Alsworth of up to a total per regulatory year of 10 bull moose among the communities is allowed for ceremonial purposes, under the terms of a Federal registration permit. Bull moose may be taken from July 1 through June 30. Permits, available to all 5 communities, will be issued until all 10 permits are used to individuals only at the request of a local organization. This 10 moose limit is not cumulative with that permitted for potlatches by the State.

Harvest limits	Open season
Hunting	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 9(B)—Rural residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth only—1 bear by Federal registration permit only.	Oct. 1–Oct. 21 May 10–May 25.

Harvest limits	Open season
Unit 9(B)—1 bear every four regulatory years	Oct. 1–Oct. 21. (Odd years only); May 10–May 25 (even years only).
Unit 9(E)—1 bear by Federal registration permit or State harvest tag	Oct. 1–Dec. 31. May 10–May 25.
Caribou:	
Unit 9(A)–4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30.	Aug. 10–Mar. 31.
Unit 9(C)–4 caribou; however, no more than 1 may be a cow, no more than 2 caribou may be taken Aug. 10–Nov. 30, and no more than 1 caribou may be taken per calendar month between Dec. 1–Mar. 31.	Aug. 10–Mar. 31.
Unit 9(B)–5 caribou; however, no more than 2 may be bulls	Aug. 1–Apr. 15.
Unit 9(D)—closed to all hunting of caribou	No open season.
Unit 9(E)—that portion southwest of the headwaters of Fireweed and Blueberry Creeks (north of Mt. Veniaminof) to and including the Sandy River drainage on the Bristol Bay side of the Alaska Peninsula; and that portion south of Seal Cape to Ramsey Bay on the Pacific side of the Alaska Peninsula divide is closed to all hunting of caribou.	No open season.
Remainder of Unit 9(E)—4 caribou	Aug. 10–Apr. 30.
Sheep:	
Unit 9(B)—Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth only—1 ram with 7/8 curl horn by Federal registration permit only.	Aug. 10–Oct. 10.
Remainder of Unit 9—1 ram with 7/8 curl horn	Aug. 10–Sept. 20.
Moose:	
Unit 9(A)—1 antlered bull	Sept. 1–Sept. 15.
Unit 9(B)—1 antlered bull	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the north—1 antlered bull	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the south—1 antlered bull. However, during the period Aug. 20–Aug. 31, bull moose may be taken by Federal registration permit only. During the December hunt, antlerless moose may be taken by Federal registration permit only. The antlerless season will be closed when 5 antlerless moose have been taken. Public lands are closed during December for the hunting of moose, except by eligible rural Alaska residents during seasons identified above.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Remainder of Unit 9(C)—1 moose, however, antlerless moose may be taken only from Dec. 1–Dec. 31	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Unit 9(E)—1 antlered bull	Sept. 1–Sept. 20. Dec. 1–Dec. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White):	
No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July. 1–June 30.
Lynx:	
2 lynx	Nov. 10–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
Unit 9(B)—40 beaver per season; however, no more than 20 may be taken between Apr. 1–May 31	Jan. 1–May 31.
Remainder of Unit 9—40 beaver per season; however, no more than 20 may be taken between Apr. 1–Apr. 30	Jan. 1–Apr. 30.
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White):	
No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Lynx:	
No limit	Nov. 10–Feb. 28.
Marten:	
No limit	Nov. 10–Feb. 28.
Mink and Weasel:	
No limit	Nov. 10–Feb. 28.
Muskrat:	
No limit	Nov. 10–June 10.

Harvest limits	Open season
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(10) *Unit 10.* (i) Unit 10 consists of the Aleutian Islands, Unimak Islands and the Pribilof Islands.

(ii) On Otter Island in the Pribilof Islands the taking of any wildlife species for subsistence uses is prohibited.

Harvest limits	Open season
Hunting	
Caribou:	
Unit 10—Unimak Island only	No open season.
Remainder of Unit 10—No limit	July 1–June 30.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Mink and Weasel:	
No limit	Nov. 10–Feb. 28.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(11) *Unit 11.* Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier.

(i) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear:	
3 bears	July 1–June 30.
Caribou:	
Unit 11—Mentasta herd	Aug. 1–Mar. 31.

Harvest limits	Open season
1 bull by Federal registration permit only. Federal public lands are closed to the taking of caribou except to the residents of Chitina, Chistochina, Copper Center, Gakona, Gulkana, Mentasta, and Tazlina. Up to 15 permits may be issued	
Unit 11—Remainder	No open season.
Sheep:	
1 sheep	Aug. 10–Sept. 20.
Moose:	
1 antlered bull	Aug. 25–Sept. 20.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Dec. 15–Jan. 15.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Jan. 31.
Public lands are closed to the taking of wolverine except by eligible rural Alaska residents during seasons identified above	
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Mar. 31
Trapping	
Beaver:	
30 beaver per season	Nov. 10–Apr. 30.
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Lynx:	
No limit	Dec. 15–Jan. 15.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
2 wolverine	Nov. 10–Jan. 31.
Public lands are closed to the taking of wolverine except by eligible rural Alaska residents during seasons identified above	

(12) *Unit 12.* Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage.

(i) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Trapping of wolves in Unit 12 during April and October with a steel trap, or with a snare using cable smaller than 3/32 inch diameter, is prohibited.

(ii) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear:	
3 Bears	July 1–June 30.
Caribou:	
Unit 12—that portion west of the Nabesna River within the drainages of Jack Creek, Platinum Creek, and Totschunda Creek—The taking of caribou is prohibited on public lands.	No open season.
Unit 12—that portion lying east of the Nabesna River and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—The taking of caribou is prohibited on public lands.	No open season.

Harvest limits	Open season
Remainder of Unit 12—1 bull	Sept. 1–Sept. 20.
1 bull caribou may be taken by a Federal registration permit during a winter season to be announced for the rural Alaska residents of Tetlin and Northway only.	Winter season to be announced by the Board.
Sheep:	
1 ram with full curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 12—that portion drained by the Tanana, Nabesna, and Chisana Rivers within the Tetlin National Wildlife Refuge and those lands within the Wrangell-St. Elias National Preserve north and east of a line formed by the Pickerel Lake Winter Trail from the Canadian border to the southern boundary of the Tetlin National Wildlife Refuge—1 antlered bull; however during the Aug. 20–Aug. 28 season only bulls with spike/fork antlers may be taken. The November season is open by Federal registration permit only.	Aug. 20–Aug. 28. Sept. 1–Sept. 15. Nov. 20–Nov. 30.
Unit 12—that portion lying east of the Nabesna River, east of the Nabesna Glacier, and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 antlered bull; however during the Aug. 20–Aug. 28 season only bulls with spike/fork antlers may be taken.	Aug. 20–Aug. 28. Sept. 1–Sept. 30.
Unit 12—Remainder—1 antlered bull; however during the Aug. 20–Aug 28 season only bulls with spike/fork antlers may be taken.	Aug. 20–Aug. 28. Sept. 1–Sept. 15.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Jan. 31.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
15 beaver per season	Nov. 1–Apr. 15.
Coyote:	
No limit	Nov. 1–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
No limit	Dec. 15–Jan 15.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Sept. 20–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Oct. 1–Apr. 30.
Wolverine:	
No limit	Nov. 1–Feb. 28.

(13) *Unit 13.* (i) Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River:

(A) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile

77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13(E) consists of the remainder of Unit 13.

(ii) Within the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) lands within Mount McKinley National Park as it existed prior to December 2, 1980 are closed to subsistence. Subsistence uses as authorized by this paragraph (k)(13) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) use of motorized vehicles or pack animals for hunting is prohibited from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Cantwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) except for access and transportation of harvested wildlife on Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Board, the use of motorized vehicles for subsistence hunting, is prohibited in the Sourdough Controlled Use Area. The Sourdough Controlled Use Area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers Creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear:	
3 bears	July 1–June 30.
Caribou:	
2 caribou by Federal registration permit only. Hunting within the Trans-Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified as the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline.	Aug. 10–Sept. 30. Jan. 5–Mar. 31.
Sheep:	
Unit 13—excluding Unit 13(D) and the Tok and Delta Management Areas—1 ram with ⅞ curl horn	Aug. 10–Sept. 20.
Moose:	
1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household	Aug. 1–Sept. 20.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Dec. 15–Jan. 15.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Jan. 31.
Public lands are closed to the taking of wolverine, except by eligible rural Alaska residents during seasons identified above	
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Mar. 31.

Harvest limits	Open season
Trapping	
Beaver:	
30 beaver per season	Oct. 10–Apr. 30.
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Lynx:	
No limit	Dec. 15–Jan. 15.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
2 wolverine	Nov. 10–Jan. 31.
Public lands are closed to the taking of wolverine, except by eligible rural Alaska residents during seasons identified above	

(14) *Unit 14*. (i) Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River:

(A) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(C) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A).

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Fort Richardson and Elmendorf Air Force Base Management Areas, consisting of the Fort Richardson and Elmendorf Military Reservation, are closed to the subsistence taking of wildlife;

(B) The Anchorage Management Area, consisting of all drainages south of Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek is closed to subsistence taking of wildlife for subsistence uses.

(iii) Unit-specific regulations:

(A) In Unit 14(A), bait may be used to hunt black bear between April 15 and May 25;

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear:	
Unit 14 (A) and (C)—1 bear	July 1–June 30.
Brown Bear:	
Unit 14(A)—1 bear every four regulatory years	Sept. 15–Oct. 10. May 1–May 25.
Coyote:	
Unit 14 (A) and (C)—2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 14—2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
Unit 14(A)—5 hares per day	July 1–June 30.
Unit 14(C)—5 hares per day	Spt. 8–Apr. 30.
Lynx:	
2 lynx	Dec. 15–Jan. 15.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 14(A)—15 per day, 30 in possession	Aug. 10–Mar. 31.
Unit 14(C)—5 per day, 10 in possession	Sept. 8–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	

Harvest limits	Open season
Unit 14(A)—10 per day, 20 in possession	Aug. 10–Mar. 31.
Unit 14(C)—10 per day, 20 in possession	Sept. 8–Mar. 31.
Remainder of Unit 14—20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver:	
Unit 14(A)—30 beaver per season	Nov. 10–Apr. 30.
Unit 14(C)—that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 beaver per season.	Dec. 1–Apr. 15.
Coyote:	
Unit 14(A)—No limit	Nov. 10–Mar. 31.
Unit 14(C)—No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 14(A)—No limit	Nov. 10–Feb. 28.
Unit 14(C)—1 fox	Nov. 10–Feb. 28.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–May 15.
Otter:	
Unit 14(A)—No limit	Nov. 10–Mar. 31.
Unit 14(C)—No limit	Nov. 10–Feb. 28.
Wolf:	
Unit 14(A)—No limit	Nov. 10–Mar. 31.
Unit 14(C)—No limit	Nov. 10–Feb. 28.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(15) *Unit 15.* (i) Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet and Turnagain Arm from Gore Point to the point where longitude line 150° 00′ W. crosses the coastline of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150° 00′ W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary:

(A) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(B) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15(C) consists of the remainder of Unit 15.

(ii) The Skilak Loop Management Area, which consists of that portion of Unit 15(A) bounded by a line beginning at the eastern most junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its western most junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning, is closed to the taking of wildlife, except that grouse and ptarmigan may be taken only from October 1-March 1 by bow and arrow only.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) The Skilak Loop Management Area is closed to subsistence trapping of furbearers;

(C) That portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier is closed to the trapping of marten;

(D) Taking a red fox in Unit 15 by any means other than a steel trap or snare is prohibited.

Harvest limits	Open season
Hunting	
Black Bear:	
Unit 15(C)—3 bears	July 1–June 30.
Unit 15 Remainder	No open season.
Moose:	
Unit 15 (B) and (C)—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug. 10–Sept. 20.
Unit 15(A)	No open season.
Coyote:	
No limit	Sept. 1–Apr. 30.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.

Harvest limits	Open season
Wolf:	
Unit 15—that portion within the Kenai National Wildlife Refuge—2 Wolves	Aug. 10–Apr. 30.
Unit 15—Remainder—5 Wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 15 (A) and (B)—20 per day, 40 in possession	Aug. 10–Mar. 31
Unit 15(C)—20 per day, 40 in possession	Aug. 10–Dec. 31
Unit 15(C)—5 per day, 10 in possession	Jan. 1–Mar. 31
Trapping	
Beaver:	
20 Beaver per season	Dec. 1–Mar. 31.
Coyote:	
No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black, and Silver Phases):	
1 Fox	Nov. 10–Feb. 28.
Marten:	
Unit 15(B)—that portion east of the Kenai River, Skilak Lake, Skilak River and Skilak Glacier	No open season.
Remainder of Unit 15—No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–May 15.
Otter:	
Unit 15(A), (B)—No limit	Nov. 10–Jan. 31.
Unit 15(C)—No limit	Nov. 10–Feb. 28.
Wolf:	
No limit	Nov. 10–Feb. 28.
Wolverine:	
Unit 15 (B) and (C)—No limit	Nov. 10–Feb. 28.

(16) *Unit 16.* (i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier:

(A) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16(B) consists of the remainder of Unit 16.

(ii) The Mount McKinley National Park, as it existed prior to December 2, 1980, is closed to subsistence uses. Subsistence uses as authorized by this paragraph (k)(16) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear:	
3 bears	July 1—June 30.
Caribou:	
1 caribou	Aug. 10—Oct. 31.
Moose:	
Unit 16(B)—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 antlered bull	Sept. 1—Sept. 15.
Remainder of Unit 16(B)—1 moose; however, antlerless moose may be taken only from Sept. 25—Sept. 30 and from Dec. 1—Feb. 28 by Federal registration permit only.	Sept. 1—Sept. 30. Dec. 1—Feb. 28.
Coyote:	
2 coyotes	Sept. 1—Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1—Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1—June 30.
Lynx:	
2 lynx	Dec. 15—Jan. 15.
Wolf:	

Harvest limits	Open season
5 wolves	Aug. 10—Apr. 30.
Wolverine:	
1 wolverine	Sept. 1—Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10—Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10—Mar. 31.
Trapping	
Beaver:	
30 beaver per season	Nov. 10—Apr. 30.
Coyote:	
No limit	Nov. 10—Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10—Feb. 28.
Marten:	
No limit	Nov. 10—Jan. 31.
Mink and Weasel:	
No limit	Nov. 10—Jan. 31.
Muskrat:	
No limit	Nov. 10—June 10.
Otter	
No limit	Nov. 10—Mar. 31.
Wolf	
No limit	Nov. 10—Mar. 31.
Wolverine:	
No limit	Nov. 10—Feb. 28.

(17) *Unit 17* (i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points including Hagemeister Island and the Walrus Islands:

(A) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17(B) consists of the Nushagak River drainage upstream from, and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17(C) consists of the remainder of Unit 17.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legally permitted hunting camps, the Upper Mulchatna Controlled Use Area consisting of Unit 17(B), is closed from Aug. 1–Nov. 1 to the use of any motorized vehicle for hunting ungulates, bear, wolves and wolverine, including transportation of hunters and parts of ungulates, bear, wolves or wolverine;

(B) The Western Alaska Brown Bear Management Area which consists of Unit 17 (A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 17(A) and that portion of Unit 17(B) draining into the Nuyakuk Lake and Tikchik Lake—1 bear	Sept. 1–May 31.
Remainder of Unit 17(B)—1 bear every four regulatory years	Sept. 20–Oct. 10. May 10–May 25.
Unit 17(C)—1 bear every four regulatory years	Sept. 10–Oct. 10. Apr. 10–May 25.
Caribou:	
Unit 17(A)—that portion west of the Togiak River, Togiak Lake, Izavieknik River, Upper Togiak Lake, and south to Cape Newenham—2 carbibou. Season to be opened by announcement when 3,000 caribou have moved into the area.	Aug. 1–Mar. 31.
Unit 17 (A) and (C)—that portion of 17 (A) and (C) consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—1 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by the residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark's Point, and Ekuk during seasons identified above.	Aug. 1–Aug. 31. Dec. 1–Mar. 31.
Unit 17 (B) and (C)—that portion of 17(C) east of the Nushagak River—5 caribou; however, no more than 2 caribou may be bulls.	Aug. 1–Apr. 15.

Harvest limits	Open season
Sheep:	
1 ram with full curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 17(B)—that portion that includes all the Mulchatna River drainage upsteam from and including the Chilchitna River drainage—1 bull by State registration permit only; however, during the period Sept. 1–Sept. 15 a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15.
Remainder of Unit 17(B)—1 bull by State registration permit only; however, during the period Sept. 1–Sept. 15 a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept.15. Dec. 1–Dec. 31.
Unit 17(C)—that portion that includes the Iowithla drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 bull by State registration permit only; however, during the period Sept. 1–Sept. 15 a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15.
Remainder of Unit 17(C)—1 bull by State registration permit only; however, during the period Sept. 1–Sept. 15 a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 10–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 17(A)—20 beaver per season	Jan. 1–Feb. 28.
Unit 17 (B) and (C)—20 beaver per season	Jan. 1–Feb. 28.
Coyote	
No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase):	
No. limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Lynx:	
No limit	Nov. 10–Feb. 28.
Marten:	
No limit	Nov. 10–Feb. 28.
Mink and Weasel:	
No limit	Nov. 10–Feb. 28
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(18) *Unit 18*. (i) Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimuit and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Kalskag Controlled Use Area which consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag is closed to the use of aircraft for hunting any ungulate, bear, wolf, or wolverine, including the transportation of any hunter and ungulate, bear, wolf, or wolverine part; however, this does not apply to transportation of a hunter or ungulate, bear, wolf, or wolverine

part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the Area and points outside the Area;

(B) The Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19 (A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) A firearm may be used to take beaver under a trapping license in Unit 18 from April 1–June 10.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
1 bear	Sept. 1–May 31.
Caribou:	
Unit 18—that portion south of the Yukon River—Kilbuck caribou herd; rural Alaska residents domiciled in Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaskiak, Napakiak, Kasigluk, Atmauthluak, Nunapitchuk, Tuntutuliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills, only. A Federal registration permit is required. The number of permits available for these hunts will be determined at a later date. The season will be closed when the total harvest reaches guidelines as described in the approved ''Oavilngutt (Kilbuck) Caribou Herd Cooperative Management Plan.''.	Dec. 15–Jan. 9. Feb. 23–Mar. 15.
Unit 18—that portion north of the Yukon River—5 caribou per day	Aug. 1–Mar. 31.
Remainder of Unit 18	No open season.
Moose:	
Unit 18—that portion north and west of a line from Cape Romazof to Kuzilvak Mountain, and then to Mountain Village, and west of, but not including, the Andreafsky River drainage—1 antlered bull.	Sept. 5–Sept. 25.
Unit 18—Goodnews River and Kanektok River drainages	No open season.
Unit 18—Kuskokwim River drainage—1 antlered bull. A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28.	Aug. 25–Sept. 25. Winter season to be announced.
Remainder of Unit 18—1 antlered bull. A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28.	Sept. 1–Sept. 30. Winter season to be announced.
Public lands in Unit 18 are closed to the hunting of moose, except by rural Alaska residents of Unit 18 and Upper Kalskag during seasons identified above.	
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July. 1–June 30.
Lynx:	
2 lynx	Nov. 10–Mar. 31.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
No limit	Nov. 1–June 10.
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Mar. 31.
Lynx:	
No limit	Nov. 10–Mar. 31.
Marten:	
No limit	Nov. 10–Mar. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.

Harvest limits	Open season
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Mar. 31.

(19) *Unit 19*. (i) Unit 19 consists of the Kuskokwim River drainage upstream from Lower Kalskag:

(A) Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(B) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mount McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19(D) consists of the remainder of Unit 19.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Subsistence uses as authorized by this paragraph are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) The Upper Kuskokwim Controlled Use Area, which consists of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152°50′ W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf bench mark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area, or between a publicly owned airport within the area and points outside the area;

(C) The Western Alaska Brown Bear Management Area, which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 19(A) and (B) that portion which is downstream of and including the Aniak River drainage—1 bear	Sept. 1–May 31.
Remainder of Unit 19(A), (B), and (D)—1 bear every four regulatory years	Sept. 10–May 25.
Caribou:	
Unit 19(A) north of Kuskokwim River—1 caribou	Aug. 10–Sept. 30. Nov. 1–Feb. 28.
Unit 19(A) south of the Kuskokwim River, and Unit 19(B) (excluding rural Alaska residents of Lime Village)—5 caribou.	Aug. 1–Apr. 15.
Unit 19(C)—1 caribou	Aug. 10–Oct. 10.
Unit 19(D) south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou	Aug. 10–Sept. 30. Nov. 1–Jan. 31.
Remainder of Unit 19(D)—1 caribou	Aug. 10–Sept. 30.
Unit 19—Rural Alaska residents domiciled in Lime Village only; no individual harvest limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1–Aug. 9. Reporting will be by a community reporting system.	July 1–June 30.
Sheep:	
1 ram with ⅞ curl	Aug. 10–Sept. 20.

Harvest limits	Open season
Moose:	
Unit 19—Rural Alaska residents of Lime Village only—No individual harvest limit, but a village harvest quote of 40 moose (including those taken under the State Tier II system); either sex. Reporting will be by a community reporting system.	July 1–June 30.
Unit 19(A)—that portion north of the Kuskokwim River upstream from, but not including the Kolmakof River drainage and south of the Kuskokwim River upstream from, but not including the Holokuk River drainage—1 moose; however, antlerless moose may be taken only during the Feb. 1–Feb. 10 season.	Sept. 1–Sept. 20. Nov. 20–Nov. 30. Jan. 1–Jan. 10. Feb. 1–Feb. 10.
Remainder of Unit 19(A)—1 bull	Sept. 1–Sept. 20. Nov. 20–Nov. 30. Jan. 1–Jan. 10. Feb. 1–Feb. 10.
Unit 19(B)—1 antlered bull	Sept. 1–Sept. 30.
Unit 19(C)—1 antlered bull	Sept. 1–Oct. 10.
Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull.	Sept. 1–Sept. 30.
Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull	Sept 1–Sept. 30. Dec. 1–Feb. 28.
Remainder of Unit 19(D)—1 antlered bull	Sept. 1–Sept. 30. Dec. 1–Dec. 15.
Coyote:	
2 coyotes	Sept. 1–Apr 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
No limit	Nov. 1–Apr. 15.
Coyote:	
No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Mar. 31.
Lynx:	
No limit	Nov. 1–Feb. 28.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Mar. 31.
Wolverine:	
No limit	Nov. 1–Mar. 31.

(20) *Unit 20.* (i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages and the Tanana River drainage north of Unit 13 and downstream from the east bank of the Robertson River:

(A) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(B) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding the Banner Creek drainage;

(E) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20(F) consists of the remainder of Unit 20.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Subsistence uses as authorized by this paragraph (k)(20) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) Use of motorized vehicles or pack animals for hunting is prohibited from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as provided below. The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(D) The Glacier Mountain Controlled Use Area, which consists of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway, is closed to the use of any motorized vehicle for hunting from August 5–September 20; however, this does not prohibit motorized access via, or transportation of harvested wildlife on, the Taylor Highway or any airport;

(E) The Minto Flats Management Area, which consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning, is open to moose hunting by permit only;

(F) The Fairbanks Management Area, which consists of the Goldstream subdivision (SE ¼ SE ¼, Section 28 and Section 33, Township 2 North, Range 1 West, Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning, is open to moose hunting by bow and arrow only.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Trapping of wolves in Unit 20(E) during April and October with a steel trap, or with a snare using cable smaller than 3⁄32 inch diameter, is prohibited;

(C) The taking of up to three moose per regulatory year by the residents of Unit 20 and 21 is allowed for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting	
Black Bear:	
3 bears	July 1–June 30.

Harvest limits	Open season
Brown Bear:	
Unit 20—except Unit 20(E)—1 bear every four regulatory years	Sept. 1–May 31.
Caribou:	
Unit 20(E)—1 bull by Federal registration permit only; the season will close when a combined State/Federal harvest quota of 150 for the Fortymile herd has been reached	Aug. 10–Sept.30. Nov. 15–Feb. 28.
Unit 20(F)—Tozitna River drainage—1 caribou; however, only bull caribou may be taken Aug. 10–Sept. 30	Aug. 10–Sept. 30 Nov. 26–Dec. 10. Mar. 1–Mar. 15.
Unit 20(F)—south of the Yukon River—1 caribou	Dec. 1–Dec. 31.
Remainder of Unit 20(F)—1 bull	Aug. 10–Sept. 30.
Moose:	
Unit 20(A)—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only	Sept. 1–Sept. 20. Jan. 10–Feb. 28.
Unit 20(B)—the drainage of the Middle Fork of the Chena River and that portion of the Salcha River Drainage upstream from and including Goose Creek—1 antlered bull	Sept. 1–Sept. 20.
Remainder of Unit 20(B)—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(C)—that portion within Denali National Park and Preserve west of the Toklat River, excluding lands within Mount McKinley National Park as it existed prior to December 2, 1980—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken	Sept. 1–Sept. 30. Nov. 15–Dec. 15.
Remainder of Unit 20(C)—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30.
Unit 20(E)—that portion drained by the Ladue, Sixty-mile, and Forty-mile Rivers (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 antlered bull	Sept. 1–Sept. 15.
Remainder of Unit 20(E)—that portion draining into the Yukon River upstream from and including the Charley River drainage to and including the Boundary Creek drainages and the Taylor Highway from mile 145 to Eagle—1 antlered bull.	Sept. 5–Sept. 30.
Unit 20(F)—that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only	Sept. 1–Sept. 25.
Remainder of Unit 20(F)—1 antlered bull	Sept. 1–Sept. 25.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
Unit 20(E)—2 lynx	Nov. 1–Jan. 31.
Remainder of Unit 20—2 lynx	Dec. 1–Jan. 31.
Wolf:	
10 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruse, Blue, Ruffed, and Sharp-tailed):	
Unit 20(D)—that portion south of the Tanana River and west of the Johnson River—15 per day, 30 in possession, provided that not more than 5 per day and 10 in possession are sharp-tailed grouse	Aug. 25–Mar. 31.
Unit 20—Remainder—15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 20—those portions within five miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession	Aug. 10–Mar. 31.
Unit 20—Remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.

Trapping

Beaver:	
Unit 20(A), 20(B), Unit 20(C), Unit 20(E), and 20(D)—that portion draining into the north bank of the Tanana River, including the islands in the Tanana River—25 beaver	Nov. 1–Apr. 15.
Remainder of Unit 20(D)—15 beaver	Feb. 1–Apr. 15.
Unit 20(F)—50 beaver	Nov. 1–Apr. 15.
Coyote:	
Unit 20(E)—No limit	Nov. 1–Feb. 28.
Remainder Unit 20—No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
Unit 20 (A), (B), (D), (E), and (C) east of the Teklanika River—No limit	Dec. 15–Jan. 15.
Unit 20(F) and the remainder of 20(C)—No limit	Dec. 1–Jan. 31.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
Unit 20(E)—No limit	Sept. 20–June 10.

Harvest limits	Open season
Remainder of Unit 20—No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
Unit 20(E)—No limit	Oct. 1–Apr. 30.
Remainder of Unit 20—No limit	Nov. 1–Mar. 31.
Wolverine:	
No limit	Nov. 1–Feb. 28.

(21) *Unit 21*. (i) Unit 21 consists of drainages into the Yukon River upstream from Paimiut to, but not including the Tozitna River drainage on the north bank, and to, but not including the Tanana River drainage on the south bank; and excluding the Koyukuk River upstream and including from the Dulbi River drainage;

(A) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(B) Unit 21(B) consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dubli River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to, but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences ofthe Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57′ N. lat., 156°41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(B) The Paradise Controlled Use Area, which consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) A firearm may be used to take beaver with a trapping license in Unit 21(E) from Apr. 1–June 1;

(C) The taking of up to three moose per regulatory year by the residents of Unit 20 and 21 is allowed for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State;

(D) The taking of up to three moose per regulatory year by the residents of Unit 21 is allowed for the celebration known as the Kaltag/Nulato Stickdance, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Kaltag or Nulato. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
1 bear every four regulatory years	Sept. 1—May 31.
Caribou:	
Unit 21 (A), (B), (C), and (E)—1 caribou	Aug. 10–Sept. 30.

Harvest limits	Open season
Unit 21(D)—North of the Yukon River and east of the Koyukuk River 1 caribou; however, 2 additional caribou may be taken during a winter season to be announced.	Aug. 10–Sept. 30. Winter season to be announced
Unit 21(D)—Remainder (Western Arctic Caribou herd)—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Moose:	
Unit 21(A)—1 bull	Aug. 20–Sept. 25. Nov. 1–Nov. 30.
Unit 21 (B) and (C)—1 antlered bull	Sept. 5–Sept. 25.
Unit 21(D)—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Feb. 1–Feb. 10; moose may not be taken within one-half mile of the Yukon River during the February season. During the Sept. 1–Sept. 25 season, Federal lands within one-half mile of the Koyukuk River from 40 miles above its mouth to the lower end of the Three-Day Slough are closed to the taking of moose except by residents of Unit 21(D) and residents of Huslia and Ruby	Sept. 1–Sept. 25. Feb. 1–Feb. 10.
Unit 21(E)—1 moose; however, only bulls may be taken from Aug. 20–Sept. 25; moose may not be taken within one-half mile of the Innoko or Yukon River during the February season	Aug. 20–Sept. 25. Feb. 1–Feb. 10.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 21(E)—No limit	Nov. 1–June 1.
Remainder of Unit 21—No Limit	Nov. 1–Apr. 15.
Coyote:	
No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
No limit	Nov. 1–Feb. 28.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Mar. 31.
Wolverine:	
No limit	Nov. 1–Mar. 31.

(22) *Unit 22*. (i) Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of, but not including, the Tisuk River to and including Cape York, and St. Lawrence Island;

(E) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope

River drainage, and including Little Diomede Island and Fairway Rock.

(ii) Unit-specific regulations:

(A) A firearm may be used to take beaver with a trapping license in Unit 22 during the established seasons;

(B) Coyote, incidentally taken with a trap or snare intended for red fox or wolf, may be used for subsistence purposes.

Harvest limits	Open season
Hunting	
Black Bear:	
3 bears	July 1—June 30.
Brown Bear:	
Unit 22(A)—1 bear by residents of Unit 22(A) only	Sept. 1–Oct. 31. Apr. 15–May 25.
Unit 22(B)—1 bear by residents of Unit 22(B) only	Sept. 1–Oct. 31. Apr. 15–May 25.
Unit 22(C)	No open season.
Remainder of Unit 22—1 bear every four regulatory years	Sept. 1–Oct. 31. Apr. 15–May 25.
Caribou:	
Unit 22(A) and (B)—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Moose:	
Unit 22(A)—1 antlered bull; however, the period of Dec. 1—Jan. 31 is restricted to residents of Unit 22(A) only	Aug. 1–Sept. 30. Dec. 1–Jan. 31.
Unit 22(B)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(C)—1 antlered bull	Sept. 1–Sept. 14.
Unit 22(D)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(E)—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
Muskox:	
Unit 22(D) and (E)—1 bull by Federal registration permit only. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. The season in each subunit will be closed when 8 bulls and 7 bulls are taken in Units 22(D) and (E) respectively.	Sept. 1–Jan. 31.
Remainder of Unit 22	No open season.
Beaver:	
Unit 22(A) and (B)—50 beaver	Nov. 1–June 10.
Unit 22(D)— 50 beaver	Nov. 1–Apr. 15.
Unit 22 Remainder	No open season.
Coyote:	
Federal public lands are closed to the taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra):	
No limit	Sept. 1–Apr. 15.
Lynx:	
2 lynx	Nov. 1–Apr. 15.
Marten:	
Unit 22(A) and 22(B)—No limit	Nov. 1–Apr. 15.
Unit 22 Remainder	No open season.
Mink and Weasel:	
No limit	Nov. 1–Jan. 31.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Apr. 15.
Wolverine:	
1 wolverine	Sept. 1–Mar 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 22(A) and 22(B) east of and including the Niukluk River drainage—40 per day, 80 in possession	Aug. 10–Apr. 30.
Unit 22 Remainder— 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 22(A) and (B)— 50 beaver	Nov. 1–June 10.
Unit 22(C) (D), and (E)—50 beaver	Nov. 1–Apr. 15.
Coyote:	
Federal public lands are closed to the taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 1–Apr. 15.

Harvest limits	Open season
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Apr. 15.
Lynx:	
No limit	Nov. 1–Apr. 15.
Marten:	
No limit	Nov. 1–Apr. 15.
Mink and Weasel:	
No limit	Nov. 1–Jan. 31.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Apr. 15.
Wolverine:	
No limit	Nov. 1–Apr. 15.

(23) *Unit 23*. (i) Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Noatak Controlled Use Area, which consists of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Noatak River, and extending upstream to the mouth of Sapun Creek, is closed for the period August 25–September 15 to the use of aircraft in any manner either for hunting of ungulates, bear, wolves, or wolverine, or for transportation of hunters or harvested species. This does not apply to the transportation of hunters or parts of ungulates, bear, wolves, or wolverine by regularly scheduled flights to communities by carriers that normally provide scheduled air service;

(B) The Northern Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A) is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting; aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) Caribou may be taken from a boat under power in Unit 23;

(B) Swimming caribou may be taken with a firearm using rimfire cartridges;

(C) A firearm may be used to take beaver with a trapping license in all of Unit 23 from Nov. 1–Jun. 10.

Harvest limits	Open season
Hunting	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 23—except the Baldwin Peninsula north of the Arctic Circle-1 bear	Sept. 1–May 31.
Remainder of Unit 23—1 bear ever four regulatory years	Sept. 1–Oct. 10. Apr. 15–May 25.
Caribou:	
15 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 23—that portion west of Howard Pass and the Aniuk, Cutler and Redstone Rivers	No open season.
Remainder of Unit 23—1 ram with ⅞ curl horn or larger	Aug. 10–Sept. 20.
Remainder of Unit 23—1 sheep	Oct. 1–Apr. 30.
Moose:	
Unit 23—that portion north and west of and including the Singoalik River drainage, and all lands draining into the Kukpuk and Ipewik Rivers—1 moose; no person may take a cow accompanied by a calf.	July 1–Mar. 31.
Unit 23—that portion lying within the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Nov. 1–Mar. 31; no person may take a cow accompanied by a calf.	Aug. 1–Sept. 15. Oct. 1–Mar. 31.
Remainder of Unit 23—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
Muskox:	
Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage—1 bull by Federal registration permit only. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. The season will be closed when 9 bulls have been taken.	Sept. 1–Jan. 31.
Remainder of Unit 23	No open season.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	

Harvest limits	Open season
2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare: (Snowshoe and Tundra)	
No limit	July 1–June 30.
Lynx:	
2 lynx	Dec. 1–Jan. 15.
Wolf:	
5 wolves	Nov. 10–Mar. 31.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 23—the Kobuk and Selawik river drainages—50 beaver	Nov. 1–June 10.
Remainder of Unit 23—30 beaver	Nov. 1–June 10.
Coyote:	
No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Apr. 15.
Lynx:	
3 lynx	Dec. 1–Jan. 15.
Marten:	
No limit	Nov. 1–Apr. 15.
Mink and Weasel:	
No limit	Nov. 1–Jan. 31.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 1–Apr. 15.

(24) *Unit 24.* (i) Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(B) The Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area;

(C) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57′ N. lat., 156°41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek, then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area

and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(D) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Arctic fox, incidentally taken with a trap or snare intended for red fox, may be used for subsistence purposes.

Harvest limits	Open season
Hunting	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 24—1 bear	Sept. 1–May 31.
Caribou:	
Unit 24—the Kanuti River drainage upstream from Kanuti, Chalatna Creek, the Fish Creek drainage (including Bonanza Creek)—1 bull.	Aug 10–Sept. 30.
Remainder of Unit 24—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 24—that portion within the Gates of the Arctic National Park—3 sheep	Aug. 1–Apr. 30.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Remainder of Unit 24—1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 24—that portion within the Koyukuk Controlled Use Area—1 moose; however, antlerless moose may be taken only during the periods of Sept. 21–Sept. 25, Dec. 1–Dec. 10, and Mar. 1–Mar. 10.	Sept. 5–Sept. 25 Dec. 1–Dec. 10 Mar. 1–Mar. 10.
Unit 24—that portion that includes the John River drainage within the Gates of the Arctic National Park—1 moose	Aug. 1–Dec. 31.
Unit 24—the Alatna River drainage within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Dec. 31. Mar. 1–Mar. 10.
Unit 24—all drainages to the north of the Koyukuk River upstream from and including the Alatna River to and including the North Fork of the Koyukuk River, except those portions of the John River and the Alatna River drainages within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Sept. 25. Mar. 1–Mar. 10.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 antlered bull by Federal registration permit only.	Aug. 25–Sept. 25.
Remainder of Unit 24—1 antlered bull. Public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by eligible rural Alaska residents during seasons identified above.	Aug. 25–Sept. 25.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
No limit	Nov. 1–Apr. 15
Coyote:	
No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
No limit	Nov. 1–Feb. 28.

Harvest limits	Open season
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Mar. 31.
Wolverine:	
No limit	Nov. 1–Mar. 31.

(25) *Unit 25.* (i) Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River:

(A) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25(B) consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25(D) consists of the remainder of Unit 25.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(B) The Arctic Village Sheep Management Area; that portion of Unit 25(A) north and west of Arctic Village, which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Red Sheep Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into two roughly equal drainages; the boundary follows the easternmost fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 62 miles along the divide to the head waters of the most northerly tributary of Red Sheep Creek then follows southerly along the divide designating the eastern extreme of the Red Sheep Creek drainage then to the confluence of Red Sheep Creek and the East Fork Chandalar River. Sheep hunting in this area is restricted to residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Caribou and moose may be taken from a boat under power in Unit 25.

Harvest limits	Open season
Hunting	
Black Bear:	
3 bears	July 1–June 30.
Caribou:	
Unit 25(A), (B), and the remainder of Unit 25(D)—10 caribou; however, no more than 5 caribou may be transported from these units per regulatory year.	July 1–Apr. 30.
Unit 25(C)—that portion south and east of the Steese Highway—1 bull by Federal registration permit only; the season will close when a harvest quota for the Fortymile herd has been reached. The harvest quota will be determined by the Board after consultation with ADF&G and announced before the season opening.	Aug. 10–Sept. 30. Dec. 1–Feb. 28.
25(C)—that portion north and west of the Steese Highway—1 caribou; however, only bull caribou may be taken during the Aug. 10–Sept. 20 season. During the winter season, caribou may be taken only with a Federal registration permit.	Aug. 10–Sept. 20. Feb. 15–Mar. 15.
Unit 25(D)—that portion of Unit 25(D) drained by the west fork of the Dall River west of 150° W. long.—1 bull	Aug. 10–Sept. 30. Dec. 1–Dec. 31.

Harvest limits	Open season
Sheep:	
Unit 25(A)—that portion within the Dalton Highway Corridor Management Area	No open season.
Units 25(A)—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik during seasons identified above.	Aug. 10–Apr. 30.
Remainder of Unit 25(A)—3 sheep by Federal registration permit only	Aug. 10–Apr. 30.
Moose:	
Unit 25(A)—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 10.
Unit 25(B)—that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull.	Aug. 25–Sept. 30. Dec. 1–Dec. 10.
Unit 25(B)—that portion draining into the north bank of the Yukon River upstream from and including the Kandik River drainage, including the islands in the Yukon River—1 antlered bull.	Sept. 5–Sept. 30. Dec. 1–Dec. 15.
Remainder of Unit 25(B)—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 15.
Unit 25(C)—1 antlered bull	Sept. 1–Sept. 15.
Unit 25(D) (West)—that portion lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary—1 bull by a Federal registration permit. Alternate permits allowing for designated hunters are available to qualified applicants who reside in Beaver, Birch Creek, or Stevens Village. Moose hunting on public land in this portion of Unit 25(D) (West) is closed at all times except for residents of Beaver, Birch Creek and Stevens Village during seasons identified above. The moose season will be closed when 30 moose have been harvested in the entirety of Unit 25(D) (West).	Aug. 25–Feb. 28.
Remainder of Unit 25(D)—1 antlered moose	Aug. 25–Sept. 25. Dec. 1–Dec. 20.
Beaver:	
Unit 25, excluding Unit 25(C)—1 beaver per day; 1 in possession	Apr. 16–Oct. 31.
Unit 25(C)	No open season.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
Unit 25(C)—2 lynx	Dec. 1–Jan. 31.
Remainder of Unit 25—2 lynx	Nov. 1–Feb. 28.
Wolf:	
Unit 25(A)—No limit	Aug. 10–Apr. 30.
Remainder of Unit 25—10 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 25(C)—15 per day, 30 in possession	Aug. 10–Mar. 31.
Remainder of Unit 25—15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 25(C)—those portions within 5 miles of Route 6 (Steese Highway)—20 per day, 40 in possession	Aug. 10–Mar. 31.
Remainder of Unit 25—20 per day, 40 in possession	Aug. 10–Apr. 30.

Trapping

Beaver:	
Unit 25(C)—25 beaver	Nov. 1–Apr. 15.
Remainder of Unit 25—50 beaver	Nov. 1–Apr. 15.
Coyote:	
No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
Unit 25(C)—No limit	Dec. 1–Jan. 31.
Remainder of Unit 25—No limit	Nov. 1–Feb. 28.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	

Harvest limits	Open season
No limit	Nov. 1–Mar. 31.
Wolverine:	
Unit 25(C)—No limit	Nov. 1–Feb. 28.
Remainder of Unit 25—No limit	Nov. 1–Mar. 31.

(26) *Unit 26.* (i) Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border including the Firth River drainage within Alaska:

(A) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River drainage and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26(C) consists of the remainder of Unit 26.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Unit 26(A) Controlled Use Area, which consists of Unit 26(A), is closed to the use of aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose from Aug. 1-Aug. 31 and from Jan. 1-Mar. 31. No hunter may take or transport a moose, or part of a moose in Unit 26(A) after having been transported by aircraft into the unit. However, this does not apply to transportation of moose hunters or moose parts by regularly scheduled flights to and between villages by carriers that normally provide scheduled services to this area, nor does it apply to transportation by aircraft to or between publicly owned airports;

(B) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(C) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) Caribou may be taken from a boat under power in Unit 26.

(B) Swimming caribou may be taken with a firearm using rimfire cartridges.

Harvest limits	Open season
Hunting	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 26—1 bear	Sept. 1–May 31.
Caribou:	
Unit 26(A)—10 caribou per day; however, cow caribou may not be taken May 16–June 30. Federal lands south of the Colville River and east of the Killik River are closed to the taking of caribou by non-Federally qualified subsistence users from Aug. 1–Sept. 30.	July 1–June 30.
Unit 26(B)—10 caribou per day; however, cow caribou may be taken only from Oct. 1–Apr. 30	July 1–June 30.
Unit 26(C)—10 caribou per day	July 1–Apr. 30.
Not more than 5 caribou per regulatory year may be transported from Unit 26 except to the community of Anaktuvuk Pass.	
Sheep:	
Unit 26(A)—those portions within the Gates of the Arctic National Park—3 sheep	Aug. 1–Apr. 30.
Unit 26(A)—that portion west of Howard Pass and the Etivluk River	No open season.
Unit 26(B)—that portion within the Dalton Highway Corridor Management Area—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Remainder of Unit 26(A) and (B)—including the Gates of the Arctic National Preserve—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20.
Unit 26(C)—3 sheep per regulatory year; the Aug. 10–Sept. 20. season is restricted to 1 ram with 7/8 curl horn or larger. A Federal registration permit is required for the Oct. 1–Apr. 30 season. Kaktovik residents may harvest sheep in accordance with a Federal community harvest strategy for Unit 26(C) which provides for take of up to two harvest limits of 3 sheep by designated hunter.	Aug. 10–Sept. 20 Oct. 1–Apr. 30.
Moose:	
Unit 26(A)—that portion of the Colville River drainage downstream from the mouth of the Anaktuvuk River—1 bull. Federal public lands are closed to the taking of moose by non-Federally qualified subsistence users.	Aug. 1–31.

Harvest limits	Open season
Remainder of Unit 26	No open season.
Muskox:	
Unit 26(C)—1 bull by Federal registration permit only; up to 15 permits may be issued to rural Alaska residents of the village of Kaktovik only. Public lands are closed to the taking of muskox, except by rural Alaska residents of the village of Kaktovik during seasons identified above.	Sept. 15–Mar. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 26(A) and (B)—10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Unit 26(C)—10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Apr. 15.
Wolf:	
15 wolves	Aug. 10–Apr. 30.
Wolverine:	
5 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Coyote:	
No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Apr. 15.
Lynx:	
No limit	Nov. 1–Apr. 15.
Marten:	
No limit	Nov. 1–Apr. 15.
Mink and Weasel:	
No limit	Nov. 1–Jan. 31.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Apr. 30.
Wolverine:	
No limit	Nov. 1–Apr. 15.

Dated: June 12, 1996.

Mitch Demientieff,

Chair, Federal Subsistence Board.

Dated: June 12, 1996.

John C. Capp,

Acting Regional Forester, USDA-Forest Service.

[FR Doc. 96–18609 Filed 8–6–96; 8:45 am]

BILLING CODE 3410–1LM; 4310–55–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AH72

Informed Consent for Patient Care

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend VA regulations concerning informed consent for patient care. It is proposed to describe the requirements for obtaining and documenting informed consent. It is also proposed to describe the types of treatments or procedures for which the patient's signature on a VA-authorized form would be required and to establish a list and priority of surrogates authorized to act on behalf of patients who lack decision-making capacity. Further, it is proposed to establish an internal decision-making process for patients who lack decision-making capacity and who have no authorized surrogate. This is intended to protect patient rights and ensure that the patient (or the patient's surrogate or representative) receives sufficient information to make an informed health-care decision.

DATE: Comments must be received on or before October 7, 1996.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AH72.'' All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Ruth-Ann Phelps, Ph.D., Veterans Health Administration, Office of Professional Affairs (10A2), 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–5813.

SUPPLEMENTARY INFORMATION: This document proposes to amend VA regulations concerning informed consent for patient care. Section 7331 of title 38 United States Code provides:

> The Secretary, upon the recommendation of the Under Secretary for Health * * * shall prescribe regulations establishing procedures to ensure that all medical and prosthetic research carried out and, to the maximum extent practicable, all patient care furnished under this title shall be carried out only with the full and informed consent of the patient or subject or, in appropriate cases, a representative thereof.

Current VA regulations, found at 38 CFR 17.32, set forth VA policy and describe the process for obtaining informed consent for patient care.

VA proposes to amend these regulations to clarify patient rights and responsibilities under this section and to include more detail about the process of obtaining informed consent. In addition, the proposal contains an internal decision-making process for making treatment decisions for patients who lack decision-making capacity and who have no authorized surrogate. In a medical emergency consent would be implied. This proposal describes the conditions under which the practitioner may provide necessary medical care without the patient's or surrogate's express consent.

This proposal also includes additional protections for patients when the treatment at issue is considered extremely hazardous, involves the administration of psychotropic medication to a committed patient against his or her will, or involves testing for human immunodeficiency virus (HIV). These safeguards are designed to ensure that patients receive adequate counsel and information before they undergo such procedures and that decisions made by a surrogate in this circumstance are consistent with the patient's best interest.

The proposal would also amend the definition of ''practitioner,'' which currently reads as follows:

> Practitioner includes any physician, dentist, or health care professional who has been granted specific clinical privileges to perform the diagnostic or therapeutic procedure involved.

VA proposes to include medical and dental residents in this definition of practitioner because such residents who are authorized to perform treatments or procedures would need to be involved in the informed consent process under the proposed regulations. The revised definition specifies that the term practitioner includes medical and dental residents regardless of whether they have been granted clinical privileges.

We also note that proposed § 17.32 does not address informed consent for research except to note that, in addition to the informed consent for medical treatment, the practitioner must obtain specific consent for any aspect of the treatment or procedure that involves approved medical research. There are separate regulations that govern informed consent for research (see 38 CFR Part 16—PROTECTION OF HUMAN SUBJECTS).

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

The collection of information included in the proposed revision to § 17.32 in this rulemaking proceeding concerns the disclosure requirements that non-VA physicians contracting to perform services for VA must follow in conducting informed consent procedures. The provisions are consistent with standard medical practice in the community.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collection(s) of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and;
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the proposed collections of information contained in this document between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Title: Informed Consent.

Summary of collection of information: The information collection subject to this rulemaking concerns the disclosure requirements that non-VA physicians contracting to perform services for VA must follow in conducting informed consent procedures. The information provided is designed to ensure that the patients (or in some cases, others) have sufficient information to provide informed consent.

Description of the need for information and proposed use of information: The collection of information subject to this rulemaking is designed to obtain informed consent.

Description of likely respondents: non-VA health care providers contracting to perform services for VA.

Estimated total annual reporting burden: 60,000 hours.

The estimated annual burden per respondent: ¼ hour.

Estimated number of respondents: 240,000.

Estimated annual frequency of responses: 1 per episode.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The adoption of the proposed rule would affect VA beneficiaries but would not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.009, 64.010, 64.011.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug

abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and Dental schools, Medical devices, Medical research, Mental health programs, Nursing home, Philippines, Reporting and recordkeeping requirements, scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: October 11, 1995

Jesse Brown,

Secretary of Veterans Affairs.

Editorial note: This document was received at the Office of the Federal Register on July 31, 1996.

For the reasons set out in the preamble, 38 CFR part 17 is proposed to be amended as set forth below:

PART 17–MEDICAL

1. The authority citation for part 17 is revised to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. Section 17.32 is revised to read as follows:

Protection of Patient Rights

§ 17.32 Informed consent.

(a) *Definitions:*

Close Friend: Any person eighteen years or older who has shown care and concern for the patient's welfare; is familiar with the patient's activities, health, religious beliefs and values; and has presented a signed written statement for the record that describes that person's relationship to and familiarity with the patient.

Decision-making capacity: The ability to understand and appreciate the nature and consequences of health-care treatment decisions.

Health Care Agent: An individual named by the patient in a Durable Power of Attorney for Health Care.

Legal Guardian: A person appointed by a court of appropriate jurisdiction to make decisions for an individual who has been judicially determined to be incompetent.

Practitioner: Any physician, dentist, or health-care professional who has been granted specific clinical privileges to perform the treatment or procedure involved. For the purpose of obtaining informed consent for medical treatment, the term practitioner includes medical and dental residents regardless of whether they have been granted clinical privileges.

Signature consent: The patient's signature on a VA authorized consent form, e.g., a published numbered VA form (OF 522) or comparable form approved by the local VA facility.

Special Guardian: A person appointed by a court of appropriate jurisdiction for the specific purpose of making health-care decisions.

Surrogate: An individual, organization or other body authorized under this section to give informed consent on behalf of a patient who lacks decision-making capacity.

(b) *Policy:* Except as otherwise provided in this section, all patient care furnished under title 38 U.S.C. shall be carried out only with the full and informed consent of the patient or, in appropriate cases, a representative thereof. In order to give informed consent the patient must have decision-making capacity and be able to communicate decisions concerning health care. If the patient lacks decision-making capacity or has been declared incompetent, consent must be obtained from the patient's surrogate. Practitioners may provide necessary medical care in emergency situations without the patient's or surrogate's express consent when immediate medical care is necessary to preserve life or prevent serious impairment of the health of the patient or others and the patient is unable to consent and the practitioner determines that the patient has no surrogate or that waiting to obtain consent from the patient's surrogate would increase the hazard to the life or health of the patient or others. In such circumstances consent is implied.

(c) *General requirements for informed consent: Informed consent* is the freely given consent that follows a careful explanation by the practitioner to the patient or the patient's surrogate of the proposed diagnostic or therapeutic procedure or course of treatment. The practitioner, who has primary responsibility for the patient or who will perform the particular procedure or provide the treatment, must explain in language understandable to the patient or surrogate the nature of a proposed procedure or treatment; the expected benefits; reasonably foreseeable associated risks, complications or side effects; reasonable and available alternatives; and anticipated results if nothing is done. The patient must be given the opportunity to ask questions, to indicate comprehension of the information provided, and to grant permission freely without coercion. The practitioner must advise the patient if the proposed treatment is novel or unorthodox. The patient may withhold or revoke his or her consent at any time.

(d) *Documentation of informed consent:*

(1) The informed consent process must be appropriately documented in the medical record. In addition, signature consent is required for all diagnostic and therapeutic treatments or procedures that:

(i) Require the use of sedation;

(ii) Require anesthesia or narcotic analgesia;

(iii) Are considered to produce significant discomfort to the patient;

(iv) Have a significant risk of complication or morbidity;

(v) Require injections of any substance into a joint space or body cavity; or

(vi) Involve testing for Human Immunodeficiency Virus (HIV).

(2) The patient's signature on a VA-authorized consent form must be witnessed. The witness' signature only attests to the fact that he or she saw the patient and the practitioner sign the form. When the patient's or surrogate's signature is indicated by an ''X'', two adults must witness the act of signing. The signed form must be filed in the patient's medical record. A properly executed OF 522 or other VA-authorized consent form is valid for a period of 30 calendar days. If, however, the patient has consented to a treatment plan that involves multiple treatments or procedures, it will not be necessary to repeat the informed consent discussion and documentation so long as the course of treatment proceeds as planned, even if treatment extends beyond the 30-day period. If there is a change in the patient's condition that might alter the diagnostic or therapeutic decision, the consent is automatically rescinded.

(3) If it is impractical to consult with the surrogate in person, informed consent may be obtained by mail, facsimile, or telephone. A facsimile copy of a signed consent form is adequate to proceed with treatment. However, the surrogate must agree to submit a signed consent form to the practitioner. If consent is obtained by telephone, the conversation must be audiotaped or witnessed by a second VA employee. The name of the person giving consent and his or her authority to act as surrogate must be adequately identified for the record.

(e) *Surrogate consent:* If the practitioner who has primary responsibility for the patient determines that the patient lacks decision-making capacity and is unlikely to regain it within a reasonable period of time, informed consent must be obtained from the patient's surrogate. Patients who are incapable of giving consent as a matter of law, i.e., persons judicially determined to be incompetent and

minors not otherwise able to provide informed consent, will be deemed to lack decision-making capacity for the purposes of this section. If the patient is considered a minor in the state where the VA facility is located and cannot consent to medical treatment, consent must be obtained from the patient's parent or legal guardian. The surrogate generally assumes the same rights and responsibilities as the patient in the informed consent process. The surrogate's decision must be based on his or her knowledge *of what the patient would have wanted, i.e., substituted judgment.* If the patient's wishes are unknown, the decision must be based on the *patient's best interest.* The following persons are authorized to consent on behalf of patients who lack decision-making capacity in the following order of priority:

(1) Health-care agent;

(2) Legal guardian or special guardian;

(3) Next-of-kin: a close relative of the patient eighteen years of age or older, in the following priority: spouse, child, parent, sibling, grandparent, or grandchild; or

(4) Close friend.

(f) *Consent for patients without surrogates:*

(1) If none of the surrogates listed in paragraph (e) of this section are available, the practitioner may request Regional Counsel assistance to obtain a special guardian for health care or follow the procedures outlined in this paragraph (f).

(2) Facilities may use the following process to make treatment decisions for patients who lack decision-making capacity and have no surrogate. For treatments or procedures that involve minimal risk, the practitioner must verify that no authorized surrogate can be located. The practitioner must attempt to explain the nature and purpose of the proposed treatment to the patient and enter this information in the medical record. For procedures that require signature consent, the practitioner must certify that the patient has no surrogate. The attending physician and the Chief of Service (or his or her designee) must indicate their approval of the treatment decision in writing. Any decision to withhold or withdraw life-sustaining treatment for such patients must be reviewed by a multi-disciplinary committee appointed by the facility Director. The committee functions as the patient's advocate and may not include members of the treatment team. The committee must submit its findings and recommendations in a written report to the Chief of Staff who must note his or her approval of the report in writing. After reviewing the record, the facility Director may concur with the decision to withhold or withdraw life support or request further review by Regional Counsel.

(g) *Special consent situations:* In addition to the other requirements of this section additional protections are required in the following situations.

(1) No patient will undergo any unusual or extremely hazardous treatment or procedure, e.g., that which might result in irreversible brain damage or sterilization, except as provided in this paragraph (g). Before treatment is initiated, the patient or surrogate must be given adequate opportunity to consult with independent specialists, legal counsel or other interested parties of his or her choosing. The patient's or surrogate's signature on a VA-authorized consent form must be witnessed by someone who is not affiliated with the VA health-care facility, *e.g.,* spouse, legal guardian, or patient advocate. If a surrogate makes the treatment decision, a multi-disciplinary committee, appointed by the facility Director, must review that decision to ensure it is consistent with the patient's wishes or best interest. The committee functions as the patient's advocate and may not include members of the treatment team. The committee must submit its findings and recommendations in a written report to the facility Director. The Director may authorize treatment consistent with the surrogate's decision or request that a special guardian for health care be appointed to make the treatment decision.

(2) Administration of psychotropic medication to an involuntarily committed patient against his or her will must meet the following requirements. The patient or surrogate must be allowed to consult with independent specialists, legal counsel or other interested parties concerning the treatment with psychotropic medication. Any recommendation to administer or continue medication against the patient's will must be reviewed by a multi-disciplinary committee appointed by the facility Director for this purpose. The facility Director must concur with the committee's recommendation to administer psychotropic medications contrary to the patient's wishes. Continued therapy with psychotropic medication must be reviewed every 90 days. The patient (or a representative on the patient's behalf) may appeal the treatment decision to a court of appropriate jurisdiction.

(3) If a proposed course of treatment or procedure involves approved medical research in whole or in part, the patient or representative shall be advised of this. Informed consent shall be obtained specifically for the administration or performance of that aspect of the treatment or procedure that involves research. Such consent shall be in addition to that obtained for the administration or performance of the nonresearch aspect of the treatment or procedure and must meet the requirements for informed consent set forth in 38 CFR Part 16, Protection of Human Subjects.

(4) Testing for Human Immunodeficiency Virus (HIV) must be voluntary and must be conducted only with the prior informed and signature (written) consent of the patient or surrogate. Patients who consent to testing for HIV must sign VA form 10–012, ''Consent for HIV Antibody Testing.'' This form must be filed in the patient's medical record. Testing must be accompanied by pre-test and post-test counseling.

(Authority: 38 U.S.C. 7331, 7332, 7333)

[FR Doc. 96–19907 Filed 8–6–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 268, 269 and 271

[FRL–5548–3]

Requirements for Management of Hazardous Contaminated Media (HWIR-media); Proposed Rule—Correction Notice and Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Correction and notice of data availability.

SUMMARY: Since publication of the proposed rule ''Requirements for Management of Hazardous Contaminated Media (HWIR-media)'' (61 FR 18780 (April 29, 1996)), the Agency has become aware of four areas that should be clarified in the proposed rule. First, in the Appendices to Part 269, EPA is correcting the equations used to calculate the soil screening levels for inhalation of soil contaminants that are presented on page 18855 of the notice. These equations, as printed in the proposal, included a volatilization factor term that is not necessary. Second, also in the Appendices to Part 269, Exhibits 1, 2 and 3 appearing on pages 18855 and 18859 were mis-formatted. As a result,

the acronyms, spelled out words, and the values associated with both were not lined up properly. Some commenters have stated that this has made it difficult to determine what assumptions were used in the equations to set the proposed Bright Line concentrations. Third, EPA is clarifying the sources for the assumptions listed in Exhibits 1, 2, and 3. Fourth and finally, commenters observed that EPA did not explain how the groundwater Bright Line concentrations for dioxins and furans were developed. EPA stated in the proposal that the Bright Line concentrations were developed by using the risk values in IRIS or HEAST for each constituent; however, not all the dioxins and furans which had proposed Bright Line values for groundwater have risk values in IRIS or HEAST.[1] EPA is providing the information in today's notice to help commenters to better understand this proposal.

DATES: The comment period on the proposed rule for Requirements for Management of Hazardous Contaminated Media (61 FR 18780) ends on August 28, 1996.

ADDRESSES: Commenters on the HWIR-media proposal must send an original and two copies of their comments referencing Docket Number F–96–MHWP–FFFFF to: (1) If using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC 20460, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. For other information regarding submitting comments electronically or viewing the comments received and supporting information, please refer to the proposed rule (61 FR 17870 (April 29, 1996)). The RCRA Information Center is located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington Virginia and is open for public inspection and copying of supporting information for RCRA rules from 9 am to 4 pm Monday through Friday, except for Federal holidays. The public must make an appointment to view docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday–Friday, 9 a.m. to 6 p.m., Eastern Standard Time. For more detailed information on specific aspects of the HWIR-media rulemaking, contact Carolyn L. Hoskinson, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, phone (703) 308–8626.

SUPPLEMENTARY INFORMATION: On April 29, 1996, EPA proposed Requirements for Management of Hazardous Contaminated Media (HWIR-media). See 61 FR 18780. The following are corrections to the proposed rulemaking.

Appendices to Part 269

The equations presented on page 18855 to calculate the soil screening levels for inhalation of soil contaminants included a volatilization factor (VF) term that is not necessary. The corrected equations are presented here.

For cancer health effects:

$$SSL = \frac{TR \times AT \times 365\,days/yr}{URF \times 1000\,ug/mg \times EF \times ED \times \left[\frac{1}{PEF}\right]}$$

For non-cancer health effects:

$$SSL = \frac{THQ \times AT \times 365\,days/yr}{EF \times ED \times \left[\frac{1}{RfC}\right] \times \left[\frac{1}{PEF}\right]}$$

Exhibit 1 on page 18855 was mis-formatted and should have appeared as follows:

EXHIBIT 1.—EXPOSURE ASSUMPTIONS USED TO CALCULATE SOIL INHALATION SOIL SCREENING LEVELS*

	Cancer	Non-cancer
SSL = soil screening level	Calculated (mg/kg)	Calculated (mg/kg).
TR = target excess lifetime cancer risk	10^{-6}.	
THQ = target hazard quotient		1.
AT = averaging time	70 years	30 years.
URF = inhalation unit risk factor	Constituent specific $(ug/m^3)^{-1}$.	
RfC = inhalation reference concentration		Constituent specific (mg/m^3).
EF = exposure frequency	350 days/yr	350 days/yr.
ED = exposure duration	30 years	30 years.

[1] U.S. EPA. 1996. Integrated Risk Information System (IRIS). Online Office of Health and Environmental Assessment, National Center for Environmental Assessment, Cincinnati, Ohio. U.S. EPA. 1995a. Health Effects Assessment Summary Table. Annual Update with Supplements. FY–1995. Office of Research and Development, Office of Health and Environmental Assessment, National Center for Environmental Assessment, Cincinnati, Ohio. ECAO–CIN–821.

EXHIBIT 1.—EXPOSURE ASSUMPTIONS USED TO CALCULATE SOIL INHALATION SOIL SCREENING LEVELS*—Continued

	Cancer	Non-cancer
PEF = particulate emission factor	1.32×10^9 m^3/kg	1.32×10^9 m^3/kg.

*These exposure assumptions are presented in the Superfund Soil Screening Guidance: User's Guide, U.S. EPA, Office of Solid Waste and Emergency Response, 9355.4–23, EPA/540/R–96/018, April 1996; Soil Screening Guidance: Technical Background Document, U.S. EPA, Office of Solid Waste and Emergency Response, 9355.4–17A, EPA/540/R–95/128, PB96–963502, May 1996, and were originally presented in Risk Assessment Guidance for Superfund, Volume 1, Human Health Evaluation Manual, (Part A), EPA/540/1–89/002, 1989 and in the Supplemental Guidance to Volume 1: ''Standard Default Exposure Factors,'' EPA Office of Solid Waste and Emergency Response Directive 9285.6–03, National Technical Information Service (NTIS) PB91–921314.

Exhibit 2 on page 18855 was misformatted and should have appeared as follows:

EXHIBIT 2.—EXPOSURE ASSUMPTIONS USED TO CALCULATE SOIL INGESTION SOIL SCREENING LEVELS*

	Cancer	Non-cancer
SSL = soil screening level	Calculated (mg/kg)	Calculated (mg/kg).
TR=target excess lifetime cancer risk	10^{-6}.	
THQ=target hazard quotient		1.
AT=averaging time	70 years	6 years.
BW=body weight		15 kg.
SF=oral slope factor	Constituent specific $(mg/kg\text{-}day)^{-1}$.	
RfD=oral reference dose		Constituent specific (mg/kg-day).
IF=age-adjusted soil ingestion factor	114 mg-yr/kg-day.	
IR=soil ingestion rate		200 mg/day.
EF=exposure frequency	350 days	350 days/yr.
ED=exposure duration		6 years.

*These exposure assumptions are presented in the Superfund Soil Screening Guidance: User's Guide, U.S. EPA, Office of Solid Waste and Emergency Response, 9355.4–23, EPA/540/R–96/018, April 1996; Soil Screening Guidance: Technical Background Document, U.S. EPA, Office of Solid Waste and Emergency Response, 9355.4–17A, EPA/540/R–95/128, PB96–963502, May 1996, and were originally presented in Risk Assessment Guidance for Superfund, Volume 1, Human Health Evaluation Manual, (Part A), EPA/540/1–89/002, 1989 and in the Supplemental Guidance to Volume 1: ''Standard Default Exposure Factors,'' EPA Office of Solid Waste and Emergency Response Directive 9285.6–03. National Technical Information Service (NTIS) PB91–921314.

Exhibit 3 on page 18859 was misformatted and should have appeared as follows:

EXHIBIT 3.—EXPOSURE ASSUMPTIONS USED TO CALCULATE HWIR-MEDIA GROUND WATER BRIGHT LINES*

	Cancer	Non-cancer
C=constituent concentration in groundwater	Calculated (mg/l)	Calculated (mg/l).
TR=target excess lifetime cancer risk	10^{-3}.	
AT=averaging time	70 years	30 years.
BW=body weight	70 kg	70 kg.
SF=oral cancer slope factor	Constituent specific $(mg/kg/day)^{-1}$.	
RfD=oral reference dose		Constituent specific (mg/kg/day).
IR=groundwater ingestion rate	2 liters/day	2 liters/day.
EF=exposure frequency	350 days/year	350 days/year.
ED=exposure duration	30 years	30 years.

*These exposure assumptions are presented Risk Assessment Guidance for Superfund, Volume 1, Human Health Evaluation Manual, (Part A), EPA/540/1–89/002, 1989 and in the Supplemental Guidance to Volume 1: ''Standard Default Exposure Factors,'' EPA Office of Solid Waste and Emergency Response Directive 9285.6–03. National Technical Information Service (NTIS) PB91–921314.

Oral cancer slope factors and oral reference doses were taken from IRIS or HEAST.

In this notice, EPA is clarifying the assumptions used to calculate the HWIR-Media bright-line levels. The exposure assumptions are intended to represent an estimate of the reasonable maximum exposure (RME) for a particular exposure scenario. The goal of RME is to combine upper-bound and mid-range exposure factors so that the result represents an exposure scenario that is both protective and reasonable, but not the worst possible case. In general, exposure factors for ingestion rate, exposure frequency, and exposure duration are upper-bound estimates, while the body weight estimate represents an average value. A discussion of the choice of upper-bound versus mid-range exposure factor estimates is presented in Human Health Evaluation Manual, Supplemental Guidance: Standard Default Exposure Factors, EPA Office of Solid Waste and Emergency Response Directive 9285.6–03. National Technical Information Service (NTIS) PB91–921314.

Calculation of Groundwater Bright Lines for Dioxins and Furans

Polychlorinated dibenzodioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs) are halogenated aromatic hydrocarbons with similar physical and chemical properties. The most widely studied of these compounds is 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8,-TCDD). In fact, among dioxins and furans, it is the only compound for which toxicity benchmarks have been established by EPA. An oral cancer slope factor of 1.6E+5 (mg/kg/day)-1 was used to calculate the groundwater Bright Line concentration for this compound.[2] Toxicity benchmarks (e.g., cancer slope factor) were developed for other dioxins and furans by applying a scaling factor to the CSF for 2,3,7,8–TCDD. These scaling factors, known as toxicity equivalency factor (TEF) values, are estimates of the toxicity of dioxin-like compounds relative to 2,3,7,8–TCDD, which is assigned a TEF of 1. The TEF procedure was developed under the auspices of the North Atlantic Treaty Organization's Committee on Challenges of Modern Society (NATO/CCMS) to promote international consistency in addressing contamination involving CDDs and CDFs.[3] EPA has adopted the TEFs as an interim procedure for assessing the risks associated with exposures to complex mixtures of CDDs and CDFs.[4] The following table presents the TEFs for dioxins and furans as well as the calculated CSFs that were used to calculate the proposed HWIR-media Bright Line concentrations.

TOXICITY EQUIVALENCY FACTORS AND CALCULATED TOXICITY BENCHMARKS

Compound CAS number	Compound name	Published CSF (from HEAST) (mg/kg-day) $^{-1}$	TEF	Calculated CSF (mg/kg–day) $^{-1}$
1746–01–6	2,3,7,8–TCDDDioxin.	1.6E+5	1	1.6E+5
51207–31–9	2,3,7,8–TCDFuran.	NA	0.1	1.6E+04
57117–31–4	2,3,4,7,8–PeCDFuran.	NA	0.5	7.8E+04
99999–01–0	2,3,7,8–PeCDdioxins.	NA	0.5	7.8E+04
99999–04–0	1,2,3,7,8–PeCDfurans.	NA	0.05	7.8E+03
99999–02–0	2,3,7,8–HxCDdioxins.	NA	0.1	1.6E+04
99999–05–0	2,3,7,8–HxCDfurans.	NA	0.1	1.6E+04
99999–03–0	2,3,7,8–HpCDdioxins.	NA	0.01	1.6E+03
99999–06–0	2,3,7,8–HpCDfurans.	NA	0.01	1.6E+03
3268–87–9	OCDDioxin	NA	0.001	1.6E+02
99999–07–0	OCDFuran	NA	0.001	1.6E+02

EPA only set Bright Line concentrations for constituents for which EPA had sufficient information to do the necessary calculations to determine the Bright Line. For constituents that do not have Bright Line values, EPA proposed that the overseeing agency would use appropriate, available information to make contained-in determinations. EPA decided to use the approach described above to calculate Bright Line concentrations for dioxins and furans even though they did not have risk values in HEAST because it is a widely accepted practice to use the TEFs.

Dated: August 1, 1996.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 96–20108 Filed 8–6–96; 8:45 am]

BILLING CODE 6560–50–P

[2] This toxicity benchmark is presented in the Health Effects Assessment Summary Tables (HEAST). A slope factor of 1.6E+5 (mg/kg/day)-1 was used to calculate the groundwater Bright Line concentration level for 2,3,7,8–TCDD (and, through the TEFs, for the other dioxins and furans). However, the 1995 updates to the HEAST list a cancer slope factor of 1.5E+5 for 2,3,7,8–TCDD. See Health Effects Assessment Summary Tables, May 1995, EPA/540/R–95/036, National Technical Information Service, PB95–921199. EPA discussed on page 18801 of the proposal that ''the Agency's understanding of risk assessment * * * is always developing'' and that ''almost as soon as risk-based numbers are published, they can become outdated.'' EPA requested comment in the proposal on page 18801 on alternatives to keep the Bright line concentrations up-to-date.

[3] North Atlantic Treaty Organization, Committee on Challenges of Modern Society (NATO-CCMS) Report number 176, ''International Toxicity Equivalency Factor (I-TEF) Method of Risk Assessment for Complex Mixtures of dioxins and Related Compounds,'' and NATO/CCMS Report Number 178, ''Scientific Basis for the Development of International Toxicity Equivalency (I-TEF) Factor Method of Risk Assessment for Complex Mixtures of dioxins and Related Compounds.''

[4] See ''Interim Procedures for Establishing Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-dioxins and Dibenzofurans (CDDs and CDFs), and 1989 Update,'' U.S. Environmental Protection Agency, Risk Assessment Forum, EPA/625/3–89/016. National Technical Information Service, Springfield, VA, PB90–145756.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–164; RM–8847]

Radio Broadcasting Services; Parker, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Rick L. Murphy requesting the allotment of Channel 230C3 to Parker,

Arizona, as that community's second local FM service. Coordinates used for this proposal are 34–08–48 and 114–17–12. Parker, Arizona, is located within 320 kilometers (199 miles) of the Mexico border, and therefore, the Commission must obtain concurrence of the Mexican government to this proposal.

DATES: Comments must be filed on or before September 23, 1996, and reply comments on or before October 8, 1996.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Rick L. Murphy, 2068 McCulloch Blvd., Lake Havasu City, AZ 86403.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–164, adopted July 26, 1996, and released August 2, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–20079 Filed 8–6–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 30

RIN 1018–AD75

Disposition of Surplus Range Animals

AGENCY: Fish and Wildlife Service.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to revise its regulations pertaining to the disposition of surplus range animals. The Service has determined that this is in line with its general policies on Fenced Animal Management and Collections, donations and Disposals as outlined in the Service Manual. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound wildlife management, and is otherwise in the public interest by allowing a broader population base the opportunity to receive surplus animals which can be used for research needs, other educational purposes, biological integrity of herd management and, in some cases, subsistence. In addition, special attention has been afforded to the Native American community in the donation of bison for certain cultural and religious reasons.

DATES: Comments must be submitted on or before October 7, 1996.

ADDRESSES: Assistant Director—Refuges and Wildlife, Attention: Greg Weiler, U.S. Fish and Wildlife Service, 1849 C Street, N.W., MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Greg Weiler, at the address above; Telephone: 703/358–1744.

SUPPLEMENTARY INFORMATION: The Service proposes to revise Part 30.2 of Chapter 1 of 50 CFR, Disposition of Surplus Range Animals. The Service is rewording Part 30.2 to allow a broader range of circumstances under which unscheduled donations of surplus animals may occur. The refuge manager is given the authority to determine those ''exigent'' circumstances. The type of public institution, agency, or government which could qualify as potential recipients of animals is expanded. Donations may be made for specific purposes which are listed in chapter 7, section 13 of the Refuge Manual and include scientific educational purposes, propagation of new free-ranging populations, augmentation of existing herds for genetic purposes, public display exhibition, and food and food products.

Request for Comments

Because the Service is interested in the concerns of the public in matters of its general management and operations, it welcomes comments from all interested parties to this proposed rulemaking. A comment period of 60 days has been established during which time all comments will be reviewed and considered before promulgation of a final rule.

Paperwork Reduction Act

These proposed regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Economic Effect

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et esq.) has revealed that the rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This proposed rule would have minimal effect on such entities because the regulation has not been significantly changed, but it merely has been expanded to allow a broader range of agencies and institutions to qualify as recipients of donated surplus animals. The number, age and sex of surplus and donated animals varies from year to year. The number of animals donated reduces the number of animals available for sale. In 1995, the Service had 378 bison and 139 longhorned cattle which the Service designated as surplus animals. Of these, 322 bison (83%) were sold at auction and 56 bison (17%) were donated. All cattle were sold at auction. Buyers primarily purchase animals for breeding and herd augmentation. Animals unsuitable for breeding or herd composition needs, such as old bulls, are purchased for slaughter by meat packing firms. Total revenues from the sales in 1995 were $418,434. Animals may be donated only for specific purposes to qualified agencies or institutions. While the number of donations will vary in any given year, the number of animals available for purchase should not be significantly reduced.

Unfunded Mandates Act

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 1 U.S.C. § 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any

given year on local or State governments or private entities.

Executive Order 12988

The Service has determined that these proposed regulations meet the applicable standards provided in Sections (a) and (b) of Executive Order 12988.

Federalism

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

Environmental Considerations

Pursuant to the requirements of the National Environmental Act of 1969 (42 U.S.C. §§ 4321–4347), this action is excluded because it involves issuance of routine, recurring, or special regulations (516 DM 6, Appendix 1.4.H).

Primary Author

Greg Weiler, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 30

Animals, Range management, Wildlife refuges.

Accordingly, part 30 of Chapter 1 of Title 50 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 30—RANGE AND FERAL ANIMAL MANAGEMENT

1. The authority citation for part 30 is revised to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 668dd, as amended; 16 U.S.C. 715i, as amended; 41 CFR 101–44.

2. Section 30.2 is revised to read as follows:

§ 30.2 Disposition of surplus range animals.

Disposition shall be made only during regularly scheduled disposal program periods, except in the event of exigent circumstances affecting the animals, their range, or the recipient. The Refuge Manager is responsible for determining the existence of ''exigent circumstances.'' Surplus range animals may be disposed of, subject to State and Federal health laws and regulations, by donation for specific purposes to public agencies, public institutions, other governments or charitable institutions, or sold on the open market.

Dated: May 9, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–20016 Filed 8–6–96; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 222

[Docket No. 960730211–6211–01; I.D. 072296B]

RIN 0648–AJ03

North Atlantic Right Whale Protection

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

ACTION: Proposed rule; request for comments.

SUMMARY: The northern right whale (*Eubalaena glacialis*) has been recognized as the world's most endangered large whale species. Recent mortalities off the Atlantic coast of the United States place the western Atlantic population of the northern right whale in an even more precarious position. Vessel interactions are identified as one of the major threats facing these whales, especially collisions with, and disturbances to whales. NMFS proposes to prohibit all approaches within 500 yards (460 m), whether by vessel, aircraft or other means. The proposed rule would restrict head-on approaches to northern right whales, would prohibit any vessel maneuver that would intercept a northern right whale within 500 yards (460 m), and would require northern right whale avoidance measures under specified circumstances. Exceptions would be provided for emergency situations and where certain authorizations are provided.

DATES: Written comments must be received on or before November 5, 1996.

ADDRESSES: Comments on the proposed rule should be addressed to Chief, Marine Mammal Division, Office of Protected Resources (FPR), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the burden-hour estimates or any other aspect of the collection of information requirements contained in this proposed rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, OMB, Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Margot Bohan or Michael Payne, NMFS/FPR, 301–713–2322; Doug Beach, NMFS/Northeast Regional Office, 508–281–9254; or Kathy Wang, NMFS/Southeast Regional Office, 813–570–5312.

SUPPLEMENTARY INFORMATION:

Background

Species Description and Summary of Status

The global population of right whales (*Eubalaena spp.*) is comprised of two separate species, the northern right whale located in the northern hemisphere, and the southern right whale (*E. australis*) in the southern hemisphere. Each species consists of several stocks or populations.

The northern right whale is the large whale species most in danger of becoming extinct in the near future (The Final Recovery Plan for the Northern Right Whale, NMFS, 1991) (Recovery Plan). The Right Whale Recovery Team (Recovery Team) concluded in the Recovery Plan that the low numbers of this species in each population, and the apparently low population growth rates, stand in alarming contrast to other right whale populations in the southern hemisphere, as well as other large whale populations worldwide.

In the Pacific, at least two populations of northern right whales are thought to occur. A 1973 estimate of the Pacific populations of the northern right whale, based on sighting data collected during the 1960s, was 100–200 animals (Wada, 1973). However, the western Pacific population (found primarily in the Sea of Okhotsk) may comprise most of this estimate. In the eastern North Pacific only a few sightings of individual animals have occurred during the past several decades. Therefore, a reliable estimate of abundance for the eastern Pacific population of the northern right whale is currently not available (Small and DeMaster, 1995).

In the North Atlantic, at least two populations of right whales, an eastern and a western population, also occur, or have occurred in the past. The eastern North Atlantic population may be nearly extinct. Between 1935–85, there were only 21 possible sightings, totaling 45 individuals, and Brown (1986) considered only five of these sightings (seven individual whales) to be confirmed.

The western Atlantic population of the northern right whale (hereafter ''right whale'' refers to this population unless otherwise stated) is the population that inhabits waters off the east coast of United States. The minimum population for the western North Atlantic population (based on known photo-identified individuals) was estimated to be 295 animals (See U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments, NMFS (1995), 60 FR 44308, August 25, 1995). In recent decades, the growth rate of this population may not be significantly different than zero.

In the 12 months prior to this proposed rule, there have been 9 confirmed right whale mortalities. Two known mortalities occurred in 1995 in middle and late summer along the coastlines of Rhode Island and Canada. Seven mortalities were documented in the first three months of 1996. Five, possibly six, right whale deaths occurred during January and February 1996, in the calving grounds off Georgia and northern Florida. These mortalities included one adult male, one adult female and three calves. Several carcasses were observed, but could not be retrieved for necropsy or identification. The most recent known right whale mortality occurred near Cape Cod, Massachusetts, May 1996. Because so few individuals are left in the population, these recent mortalities are a matter of extremely serious concern.

Distribution

Like other baleen whales, right whales in the western Atlantic are migratory. The five primary habitats used by right whales during their annual migration, as described by Kenney, Winn and Macaulay (1994), include a spring/early summer feeding and nursery area for a majority of the population in the Great South Channel, a late winter/spring feeding and nursery area for a small portion of the population in Cape Cod Bay (CCB), a winter calving ground and nursery area in the coastal waters of the southeastern United States (SEUS), a summer/fall feeding and nursery area for some animals, including nearly all mother/calf pairs, in the lower Bay of Fundy, and a summer/fall feeding ground, with almost exclusively mature individuals, on the southern Nova Scotian shelf. On June 3, 1994, NMFS designated the first three areas as critical habitat for the northern right whale (59 FR 28793).

Also, during 1996, aerial surveys were conducted in areas adjacent to, but offshore and south of, the SEUS. These flights were conducted because, during each of the two previous calving seasons, at least some of the right whales observed in the area within each season apparently moved out of the SEUS during mid-winter and their distribution was unknown during that period. Aerial flights also were conducted in 1996 in response to reports of dead right whales in the waters east of the SEUS.

During 1996, four surveys were flown offshore of the SEUS resulting in four sightings of right whales. These sightings included a group of four whales, another mother and calf pair, a dead whale, and a sighting for which the number of whales could not be documented. Additional surveys are planned for the winter of 1996–97 in an attempt to determine, and more precisely characterize, the offshore distribution of right whales during the winter season.

Human Interactions With Right Whales

Human interactions with right whales are a very serious problem for right whales in the western North Atlantic. In particular, where human activities coincide with the distribution of right whales off the east coast of the United States, especially where vessel traffic and similar activities occur, there is the potential that right whales may be disturbed or their behavior otherwise altered, or that they may be injured or killed.

Right whale behavior (i.e., resting at the surface, surface skim feeding, and surface courtship activity), and their slow swimming speed relative to other large whales, make the right whale particularly susceptible to close approaches and disturbances by humans. Additionally, due to their distribution in coastal waters with high levels of human activity, the western North Atlantic population of the right whale is particularly vulnerable to human interactions.

With the exception of a few neonates, most known right whale deaths appear related to human activity. Incidents of human interactions with right whales are becoming more evident with increased efforts to retrieve carcasses and more extensive survey efforts. Collisions with ships and entrapment or entanglement with fishing gear are the primary human-induced causes of right whale mortalities and serious injuries. Ship strikes are a major cause of mortality, producing an estimated mortality rate of between 0.8 and 1.4 right whales per year (NMFS, 1995).

The Recovery Plan also recognizes that disturbance is another human-induced factor that may impede the recovery of the population in the western North Atlantic. It is known that disturbance by vessel activities can change behavior in other species of whales. Studies of baleen whales other than right whales, including the bowhead (*Balaena mysticetus*) and gray whales (*Eschrichtius robustus*), clearly document a pattern of short-term, behavioral disturbance in response to a variety of actual and simulated vessel activity and noise (Richardson et. al, 1985; Malme et. al, 1983). Studies of bowhead whales revealed that these whales oriented themselves in relation to a vessel when the engine was on, and a significant avoidance response was invoked simply by turning the engine on, even at a distance of approximately 3,000 ft (900 m). Studies of humpback whales (*Megaptera novaengliae*) on their summering grounds, as summarized by Baker and Herman (1989) and on their wintering grounds, as summarized by Bauer (1986), found similar patterns of disturbance in response to vessel activity.

Similarly, NMFS has recognized that approaches to marine mammals by aircraft below certain altitudes has the potential to harass marine mammals and has imposed restrictions on these types of approaches as conditions in various permits. Finally, although rare, deliberate approaches to whales and other marine mammals have occurred. Reports of people in close proximity to whales or other marine mammals include ''buzzing'' incidents, where a person on a thrill craft (''jet ski'') or other watercraft deliberately approaches a marine mammal, swimming and scuba activities near marine mammals, touching or petting incidents, photography or video activities and similar types of reports. Obviously, such activities may involve the risk of disturbing or harassing marine mammals.

Studies, observations and other information on the effects of disturbance on right whales are more limited and less conclusive than information concerning some other species, but the available evidence suggests that human-induced disturbance, such as by vessel activity, may change right whale behavior, displace cow/calf pairs, and break up food sources. Whether right whales react to disturbance depends both upon the type and level of the disturbance, and upon the behavior in which the right whales are engaged when the disturbance occurs.

Low-level engine noise and minor vessel maneuvering may not induce a reaction from right whales (Watkins, 1986). If the disturbance is intense, however, right whales may be forced to dive to avoid impact or other perceived

threats, to temporarily leave an area or reroute their migratory path, to expend energy in avoidance behavior, or to otherwise alter their behavior.

Courtship activities and surface skim-feeding are examples of behaviors where right whales generally appear unresponsive to low-level disturbance. In contrast, avoidance reactions to disturbance may be most significant for calves, or females with calves, animals that are the reproductive core of the population and essential for recovery. Vessel activity may displace a female with a calf from nearshore waters or interrupt nursing or similar behavior. Calves have been observed to exhibit avoidance behavior in response to the sound of vessels (NMFS, 1991).

In addition to disturbances caused by vessel movement or noise, vessels may affect right whales indirectly. For example, feeding behavior may be interrupted or affected as a result of a vessel breaking up dense surface zooplankton patches in certain feeding areas.

Furthermore, while most studies and observations have focused on the short-term responses of whales to disturbance, long-term exposure to vessel traffic, to multiple vessels operating in close proximity, or to other close human contact may have a cumulative adverse impact on whale behavior.

Significantly, if whales become habituated to vessels and related activity, they may become especially vulnerable to vessel collisions or other adverse impacts. Preliminary results of a right whale study that was based on a small data set indicated that both within 100 meters and at distances beyond 100 meters, right whales, at first, oriented themselves away from vessels, but subsequently, no deviation in behavior could be detected (CMC, 1988). Although these results should be used cautiously, it is possible that they indicate some degree of right whale habituation to vessels. Because of the resulting increased risk of vessel collision, this type of habituation may pose a more significant peril to whales than avoidance behavior.

NMFS has concluded that the effects of vessel interactions and close approaches to right whales could have consequences that may be jeopardizing the continued existence and impeding the recovery of the population.

Summary of Vessel and Related Activities

Vessel and aircraft activities occur off the east coast of the U.S. throughout the range of the right whale. These activities include recreational and commercial fishing vessels, commercial cargo and other commercial vessels, recreational boats, whalewatch boats, and military vessels. Aircraft, including fixed wing aircraft and helicopters, also fly throughout the range of the right whale.

Following are some, but not necessarily all, of the vessel activities that occur in areas of high-use by right whales, including both critical habitat areas and certain waters adjacent to critical habitat areas (right whale high-use areas).

In CCB, commercial vessel traffic associated with the Cape Cod Canal and the Boston Harbor traffic lanes, recreational boating, and commercial fishing and whale-watching activities comprise the majority of the vessel activity in the immediate area. Of these, recreational boating, commercial fishing and whale-watching contribute greatly to the level of activity in right whale high-use areas.

Recreational boating is largely a seasonal phenomenon increasing with the onset of warmer months, particularly in June. Commercial fishing vessels (primarily lobster fishing) and the placement of gear, generally begin their season in the middle of June. Whale-watching boats usually begin operations in late March or April, when whales first arrive to the area, and increase their activity with the onset of warmer weather and the tourist season. The whale-watching season typically ends by mid-October.

In the southeastern United States, vessel traffic and fisheries are the major activities in, and adjacent to, the calving grounds. Major commercial shipping and military activity also occurs near or in the SEUS. Recreational boating traffic is also fairly extensive.

Aircraft activity at altitudes that may affect or disturb right whales is thought to be concentrated in areas near population centers and to be limited primarily to private aircraft that are involved in deliberate approaches to whales.

Existing and Related Regulations and Guidelines

State right whale approach restrictions: Massachusetts has implemented a 500 yard (460 m) buffer zone between right whales and vessels. Under Massachusetts' regulations it is unlawful for a vessel to approach within 500 yards (460 m) of a right whale; to turn in a manner to intercept a right whale within 600 yards (550 m) thereof; or not to depart immediately from the buffer zone if a right whale surfaces near the vessel. The regulations apply within the territorial and inland waters of the Commonwealth of Massachusetts and certain exceptions are provided (See 322 Code of Massachusetts Regulations, 12.00 *et seq.*).

Approach restrictions for humpback whales: NMFS has implemented approach restrictions similar to those proposed here to protect humpback whales in certain areas off Hawaii although those restrictions apply to approaches within 100 yards (90 m) rather than 500 yards (460 m) of a whale (See 50 CFR 222.31).

Similarly, the National Park Service prohibits the operation of any vessel within one-quarter of a nautical mile (460 m) of a humpback whale on navigable waters within Glacier Bay National Park. Instructions are provided on what actions to take if a vessel finds itself within this area and various exceptions are specified (See 36 CFR 13.65).

Whale-watching guidelines: Under present whale-watching guidelines issued by NMFS for the New England area, vessels conducting whale-watching operations are directed to remain at least 100 ft (30 m) from all whales. In the area from 100 to 300 ft (30–90 m) of a whale, there may be no more than one boat and that boat must not operate in excess of idle speed and must avoid head-on approaches toward the whale. In the area between 300 and 600 ft (90–180 m) of a whale, there may be no more than three boats and those boats must avoid head-on approaches. The area between 600–1500 ft (180–460 m) of a whale is referred to as the ''whale awareness zone'' and boats in this zone must not change course or speed suddenly and must not use excessive speed.

Background to Proposed Rule

Recommendations of the Recovery Team: As noted above, the Recovery Team concluded in the Recovery Plan that disturbance was among the principal human-induced factors impeding right whale recovery and recommended that regulations be promulgated that: (1) Establish minimum approach distances for the northern right whale, (2) require a vessel to maintain speed and direction should a northern right whale surface within this minimum approach distance, and (3) prohibit a vessel from approaching a northern right whale or turning in any manner to intercept a whale.

This proposed rule addresses the recommendations of the Recovery Team by proposing to prohibit close approaches to right whales by vessels or other means.

Petition for rulemaking: On October 5, 1994, NMFS received a petition from GreenWorld, Inc., requesting that NMFS issue regulations establishing a 500-yard

(460-m) radius protection zone around every right whale and, citing the similarity of appearance provision of section 4(e) of the Endangered Species Act (ESA), 16 U.S.C. 1533(e), a 100-yard (90-m) radius protection zone around all other whales. The petition also asked that any approach closer than 500 yards (460 m) (or 100 yards (90 m) for every other whale species) be considered an incidental take under the ESA.

This proposed rule addresses the GreenWorld request by proposing to prohibit approaches within 500 yards (460 m) of right whales although NMFS does not propose to use the similarity of appearance provision, nor does it propose that close approaches should be considered an incidental take although certain approaches to right whales would be prohibited by regulation. Likewise, NMFS is not proposing to restrict approaches to whale species other than the right whale. NMFS has considered similar proposals in the past. On August 3, 1992, NMFS published a proposed rule of general applicability to protect whales, dolphins and porpoise from activities associated with whale watching and to establish minimum approach distances (See 57 FR 34101). That proposal was withdrawn on March 29, 1993, in part, because it was viewed as being too broad in scope (See 58 FR 16519). At that time, NMFS began an initiative to concentrate initial efforts on marine mammal approach problems on a more species-specific and region-specific basis. This proposed rule is a part of that initiative.

Comments on other rulemaking: Following publication of the proposed rule to designate critical habitat for the northern right whale (58 FR 29186, May 19, 1993), NMFS received several comments in support of a ''distance buffer'' that would be established around northern right whales. One commenter recommended that approach restrictions for all vessels around right whales be established and suggested a distance of 100 m to 300 m. A second commenter recommended that NMFS establish around every right whale, in any area designated as critical habitat, a 500 m radius ''protection zone,'' and prohibit any vessel or person from entering or knowingly remaining within this zone. The commenter further suggested that such a buffer zone be consistent with similar rules that have already been adopted by NMFS and the State of Massachusetts.

In the final rule designating critical habitat, NMFS responded to those comments (59 FR 28793, June 3, 1994) stating that, in both cases, the purpose of the buffer zones would be to ensure that vessels were kept far enough away from right whales, so that the animals would not be disturbed and would not be in danger of collision with a vessel, in as much as possible, throughout their range. Critical habitat designations reflect the identification of specific geographical areas containing physical or biological features essential to the conservation of the species, and NMFS determined that, while recognizing that the area around each right whale is important, it is not appropriate for a critical habitat designation.

At that time, NMFS stated that buffer zones around right whales should be established through separate rulemaking, similar to the special prohibitions for humpback whales in Hawaii (See 59 FR 28800, June 3, 1994). This proposed rule constitutes part of that separate rulemaking process.

Advance notice of proposed rulemaking (ANPR): On December 27, 1994, NMFS published an ANPR concerning the establishment of protection zones around right whales (59 FR 66513). The ANPR was initiated in response to the recommendations of the Recovery Team, to the petition, and to other comments received. The ANPR requested comments on the petition and the need for and types of conservation measures that would be effective in minimizing human-induced interactions with northern right whales. In response to several requests, the comment period for the ANPR was extended until April 3, 1995 (60 FR 11951, March 3, 1995).

Numerous comments on the ANPR were received. Comments were submitted by environmental groups, state and local government spokespersons, representatives of industry and private citizens. Comments were mixed in their support for and opposition to the implementation of right whale conservation measures. These comments were considered in the preparation of this proposed rule.

Description of Proposed Regulatory Measures

Summary of the proposed rule: There is good reason to believe that if the full range of human impacts specified by the Recovery Team were reduced, the chance for species recovery would be maximized. In order to minimize the risk that human activities will disturb or cause other behavioral changes in right whales and to reduce the risk of vessel collisions and other interactions with right whales, NMFS proposes:

(1) To prohibit or limit certain activities that may affect right whales, especially activities within 500 yards (460 m) of a right whale. Except under very limited circumstances, all approaches within 500 yards (460 m) would be prohibited, whether by vessel, aircraft or other means. NMFS proposes to use the definition of ''vessel'' found in the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS) (see 33 CFR Part 81 App. A, Part A, Rule 3) and in the Inland Navigation Rules (see 33 U.S.C. 2003), which includes surfboards, thrill craft or ''jet skis,'' and all other types of water craft used or capable of being used for transportation.

(2) To prohibit head-on approaches to a right whale from any distance once a right whale is sighted by an operator exercising due diligence and once the operator has had time to alter the heading of the vessel or craft accordingly.

(3) To prohibit the positioning of a vessel in the path of a right whale.

(4) To require right whale avoidance measures.

Right whale avoidance measures would be those actions necessary to avoid takings prohibited under the MMPA or the ESA, actions necessary to comply with instructions from NMFS, the U.S. Coast Guard and other agencies concerning the avoidance of right whales and, if a person, aircraft, vessel or other object is within 500 yards (460 m) of a right whale, certain steps to increase the person or object's distance from the whale.

The proposed rule provides specific guidance concerning how to increase one's distance from a right whale: (1) Sudden changes in operation are to be avoided unless necessary to avoid striking or injuring a right whale or for safe vessel or aircraft operation, (2) if one is already moving away from a right whale, approximately the same speed and direction should be maintained, (3) if one is moving toward a right whale, expeditious efforts should be made to reduce speed and to change direction away from the whale, (4) if one is approached by a whale, the person or object should move slowly but deliberately and steadily away from the whale. These requirements are not applicable under certain circumstances such as when a vessel is not underway.

Finally, the proposed rule contains an exception for emergency situations where there is a threat to the safety, health or life of a person, a significant threat to a vessel or aircraft, or a threat to the safety, health or life of a right whale, and an exception for approaches to or activity in the proximity of right whales specifically authorized in a scientific research permit, an incidental take statement, incidental take permit or similar authorization issued by NMFS. Issues considered and the applicability

of proposed measures to specific situations.

The size of the buffer zone: In preparing this proposed rule NMFS considered a variety of options. In particular, various alternatives were considered before proposing the 500-yard (460-m) buffer area around right whales. The status quo was considered inappropriate given the status of these critically endangered whales. Likewise, there was concern that a 100-yard (90–m) zone might not be large enough to conserve right whales although it was recognized that evidence of harassment or behavioral changes induced by disturbances beyond this distance was sketchy.

Generally, NMFS wanted to maximize the area of protection around right whales to avoid any potential for disturbance or behavioral changes and to reduce, if possible, the risk of collision. While NMFS considered a 1000-yard (920-m) buffer zone, NMFS concluded that right whales could not be identified at that distance and that a 500-yard (460-m) no-approach area would be the most appropriate.

Situations where the identification of the whale species is uncertain: In some situations it may be difficult for a person to differentiate between a northern right whale and another species of large whale at a distance of 500 yards (460 m) although the Recovery Team indicated that persons with knowledge or training could identify right whales at this distance.

Thus, in order to ensure compliance with the mandates concerning right whales in the proposed rule, a person would be expected to avoid close approaches to all large whales that cannot be identified as to species in waters along the east coast of the United States, especially in right whale high-use areas when those whales are expected to be present.

NMFS has concluded that a 500-yard (460-m) buffer zone would allow people to observe right whales (and other large whales if they are unable to identify the species with certainty) while providing a measure of protection and safety for these animals consistent with sound management practices and the recommendations of the Recovery Team.

Applicability to various approach activities: The proposed rule would apply broadly to approaches by vessels, aircraft or other means. NMFS recognizes that many small vessels, vessels travelling at very slow speeds, swimmers, aircraft and certain other types of close-approaches have little or no potential to cause serious injury to right whales; nonetheless, such approaches would be prohibited. First, close human contact has the potential to disturb or harass a right whale even if it does not result in injury. For example, if right whales become habituated to small vessels or vessels operating at slow speeds and fail to dive and orient themselves away from vessels, then they may become more vulnerable to larger vessels or vessels travelling at higher speeds. Next, while not currently a serious problem, NMFS wants to discourage potential activities such as airplane or helicopter whale-watching operations or other activities that could disturb or cause behavioral changes in right whales. Finally, a 500-yard (460-m) no-approach prohibition is much easier for the public to understand and easier to enforce than the more general prohibition on harassment. NMFS has concluded that this type of regulation will minimize risks and potential risks and would be justified given the precarious status of right whales .

Applicability of proposed rule to whale-watching operations: Right whales are the object of commercial whale-watching activities primarily in two areas: CCB in the late spring (mid-March through mid-May), and the lower Bay of Fundy in the late summer and fall. As stated earlier, the Recovery Plan recommends that regulations be promulgated limiting close approaches to right whales, including approaches by whale-watching vessels. Generally, whale-watching operations focus on several other large baleen whales, notably the humpback whale and the finback whale (*Balaenoptera physalus*). However, during early spring, or during those few years when right whales are the only large whale species available for viewing (1986 on Stellwagen Bank was the exceptional year for right whales), several whale-watching vessels may remain around right whales throughout the day or over a period of several days or even weeks.

It should be emphasized that this rule would apply only to vessel-approaches near right whales. Vessels operators conducting whale-watching activities in Massachusetts waters already are subject to the 500-yard (460-m) right whale buffer zone created by Commonwealth law. This proposed rule is designed to be compatible with that law.

Whale-watching vessels are not thought to present any significant risk of serious collision with right whales because an intense lookout for whales is usually maintained on these vessels and because of the way such vessels are handled. Compliance with whale-watching guidelines generally has been very good. On the other hand, the possibility of disturbances caused by vessels and the risk that right whales may become acclimated to vessel activity, as described above, does exist.

Even if current levels of whale-watching activity do not present a major or immediate direct threat to right whales, NMFS is concerned about human-induced changes to right whale behavior resulting from existing operations as well as potential future developments in this industry. Likewise, NMFS is concerned that related activities, such as aircraft whale-watching rides, could occur. NMFS wants to ensure that such activities do not develop and that the public recognizes that close encounters with right whales should be avoided under all circumstances.

Vessel approaching a right whale versus a right whale approaching a vessel: A vessel would not necessarily be in violation of the proposed regulation merely by being inside the proscribed 500-yard (450-m) area unless there is evidence that the vessel approached the right whale or that the vessel was turned, maneuvered or positioned in a manner designed to intercept a right whale. Rather, if a vessel is approached by a right whale or if a right whale surfaces near a vessel, the vessel would be required to undertake required right whale avoidance measures promptly. If a vessel remained within the proscribed area and failed to undertake the required avoidance measures, the owner or operator would be in violation of the proposed rule.

Deliberate versus unintentional approaches: Approaches to right whales, whether deliberate or unintended, present the potential serious problems described above. Disturbance of right whales may be more likely when approaches are intentional because such contact may be closer in proximity, more prolonged, or more intense. On the other hand, ship strikes and serious injuries and mortalities may be more likely to result from accidental approaches.

While intentional misconduct sometimes is considered especially culpable, it is important to note that the prohibitions on takings imposed under the MMPA and the ESA are not limited to intentional takings but also include unintentional or incidental takings as well. Similarly, regulations prohibiting approaches to humpback whales off Hawaii apply to unintentional as well as intentional approaches. In some cases, it may be appropriate to use enforcement discretion in deciding whether to bring an enforcement action against someone who accidentally approaches a whale,

but because of the risk that unintentional approaches may cause the injury or mortality of a right whale, such approaches would be prohibited under this proposed rule and all persons who are concerned about their responsibility for unintentional approaches are urged to use extra caution. Experience in Hawaii suggests that problems understanding, interpreting and enforcing the approach prohibition may be relatively minor.

Vessels at anchor or mooring: The proposed rule would not apply to anchored vessels. A vessel at anchor can not approach a right whale, and the proposed rule specifically states that whale avoidance measures are not applicable to vessels that are not underway, that is, vessels that are anchored, made fast to the shore, or aground.

In addition, it is unlikely that the proposed rule would prevent access to safe anchorages or harbors since, in most circumstances, a vessel still would have room to maneuver and approach the harbour or anchorage even if a right whale was in the vicinity.

Applicability of proposed rule to research and fishing operations: While the proposed rule would apply to all vessels, it is not expected to interfere unreasonably with research or fishing operations. Research on northern right whales for which a permit is issued under the ESA or MMPA would be exempt from the proposed rule. With respect to other types of research, researchers would be encouraged to use areas where, or seasons when, right whales are unlikely to be present, or would need to contact NMFS to explore ways to conduct the research without adverse impacts on right whales.

Fishing operations normally are conducted at vessel speeds that do not pose a significant threat to right whales and, as a result, the vessel operator is expected to have time to take action to avoid approaches to right whales that would be prohibited by this proposed rule. Nevertheless, certain operations, such as hauling back a tow, can limit a vessel's maneuverability. Such operations should not be initiated if a right whale is sighted, and certainly should not begin if the right whale is within or almost within 500 yards (460 m) of the vessel.

If haulback operations are initiated and a right whale subsequently approaches the vessel, under most circumstances, the haulback should be completed because of safety concerns and requirements for safe vessel operation. By statute, the vessel must take all reasonable actions in order to avoid violating the ESA and MMPA prohibitions on ''takes.'' Once the operation is completed or maneuverability is again unrestricted, the vessel should move slowly but deliberately and steadily in a direction away from the right whale in accordance with the right whale avoidance measures.

Maintaining a lookout and exercising due diligence: Currently, vessel operators are required by COLREGS, Rule 5 (See 33 CFR Part 81 App. A, Part B, Section 1, Rule 5) and by Rule 5 of the Inland Navigation Rules (33 U.S.C. 2005) to maintain a proper lookout. That lookout should use all available means appropriate under the circumstances to watch for whales, especially right whales. If the vessel is in an area (and time) where right whales are known to occur, or may be expected to occur, additional care is required. If vessel operators do not maintain an adequate whale lookout or fail to exercise due diligence, ship strikes of northern right whales, while unintended, are likely to continue to occur.

NMFS is cooperating with the U.S. Coast Guard, several port authorities, the U.S. Navy, state agencies and other parties to increase knowledge and awareness of the location of northern right whales generally as well as the location of specific right whales in shipping lanes or in areas with a high concentration of shipping. This proposed rule would require vessel operators to exercise due diligence to avoid head-on approaches to right whales. Similarly, vessel operators would be required to comply with instructions received from NMFS, the U.S. Coast Guard, the U.S. Navy, or port authorities concerning measures necessary to avoid approaches to right whales.

Appropriate speed: In order to avoid prohibited approaches to right whales, it may be necessary for certain vessels, especially large ships, to reduce speed. Currently, vessel operators are required by COLREGS, Rule 6, to proceed at safe speed so that the vessel can take proper and effective action to avoid collision and ''be stopped within a distance appropriate to the prevailing circumstances and conditions'' (72 COLREGS, see 33 CFR Part 81 App. A, Part B, Section 1, Rule 6). An identical requirement is imposed under the Inland Navigational Rules, 33 USC 2006.

Under circumstances where right whales are known to occur, or may be expected to be in the area where a vessel is operating, a ''distance appropriate to the prevailing circumstances'' would be at least 500 yards (460 m) from a right whale.

Vessels restricted in their ability to maneuver or in certain areas: NMFS recognizes that special circumstances sometimes restrict a vessel in its ability to maneuver, that a vessel is sometimes constrained by its draft, and that often there is a need to stay within shipping lanes or within designated channels. While right whales may avoid some channels, port areas, traffic routes and shallow water areas, clearly, collisions with right whales can occur in these places. In fact, collisions with whales may be more likely in areas or under circumstances of limited maneuverability and in these situations it is particularly important to avoid approaches within 500 yards (460 m) of a right whale.

In order to avoid prohibited approaches to right whales in these situations, extra caution including additional efforts to maintain a lookout or additional reductions in speed may be necessary.

If a right whale is positively identified and observed near a port, in a channel, in an established shipping lane, or in others areas with a high concentration of shipping activity, a vessel operator should report the sighting to the U.S. Coast Guard or the appropriate port authority, and request assistance, if appropriate. Knowledge of the location of right whales may help prevent potential collisions and allow vessels to implement appropriate whale avoidance measures.

Likewise, where the presence of a right whale would inhibit the entry of a large ship into a port or otherwise interfere with vessel operations, a vessel operator should contact the U.S. Coast Guard or port authority for assistance or instruction.

Aircraft: Approaches by aircraft below certain altitudes have been recognized by NMFS to have the potential to harass marine mammals. The proposed rule would prohibit an aircraft from approaching or circling over a right whale at an altitude below 1500 ft (460 m). NMFS has imposed restrictions on low altitude approaches to certain marine mammals as a condition on various permits. In most cases, however, the specified altitude is between 500–1000 ft (150–310 m). Given the precarious status of right whales, NMFS is proposing an altitude restriction that will minimize the possibility of the disturbance of these whales .

NMFS recognizes that there may be some commercial and military use of air space in certain areas where right whales may occur and solicits comments on the feasibility of this proposed restriction in those areas.

Jurisdictional applicability: The proposed rule would apply to all persons, vessels and aircraft subject to the jurisdiction of the United States. The proposed rule also would state clearly NMFS' interpretation of U.S. jurisdiction within the territorial sea and the U.S. exclusive economic zone (EEZ).

The proposed rule includes a definition of the term ''territorial sea.'' In 1988 the President issued a proclamation extending the breadth of the territorial sea for international purposes from three miles to twelve miles from the baseline. Whether this proclamation has an effect on a particular Federal statute depends upon whether the statute uses the term ''territorial sea'' in an international sense, i.e., linked to the extent of the territorial sea for international purposes, or in a domestic sense. Sections 9 and 10 of the ESA use the term ''territorial sea'' to denote U.S. territorial sovereignty in contrast to the ''high seas.'' These terms in the ESA appear in the original law, Pub. L. 93–205 (1973), before the establishment of the EEZ. Consequently ''territorial sea'' is used in the ESA in the international sense and would be defined by this rule as extending 12 miles from the baseline. This proposed definition is consistent with the findings, purposes and policies of the ESA, including that of utilizing all Federal authorities to meet the commitment of United States for the protection of endangered species and threatened species.

In the area outside the territorial sea but within the EEZ, the United States exercises jurisdiction with respect to certain marine resources such as marine mammals (See Section 3(14)(B) of the MMPA and Pub. L. 94–265, Sec. 404(a)). Beyond the EEZ, U.S. jurisdiction is based other factors such as U.S. citizenship or the fact that a vessel is operating as a U.S. flag vessel. Under the proposed rule, NMFS would utilize its full jurisdictional authority to protect right whales.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration as follows:

I certify that the attached proposed rule to be issued under 50 CFR part 222, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule would establish protective measures to reduce human-induced disturbance and the potential for injury or mortality to the Northern Right whale throughout its western North Atlantic range.

If adopted, the proposed rule may have a minor impact on whale-watching activities, perhaps especially in the early spring when right whales, but not other whale species, are likely to be in the area where these activities occur. This change would not be expected to affect most operations off the coast of Massachusetts since State regulations very similar to this proposed rule already are in effect within State waters. Whale-watching operations in other areas of New England, consisting of only a few vessels, may need to delay operations until later in the spring when other species of whales are available for watching if restrictions on approaches to right whales are implemented. The cost of delaying operations for a few weeks, with respect to expected revenues, is not considered significant.

Similarly, if adopted, the proposed rule may have a minor impact on commercial shipping and other vessel activities, perhaps especially in areas where and at times when right whales are know or expected to be present. In those areas and at those times, vessels may need to maintain an extra vigilant lookout and reduce speed in order to avoid approaches to right whales. In most situations, such caution would be appropriate under current law in order to avoid the risk of taking a right whale. Any change in operations and the costs associated with that change that would result from the implementation of the proposed rule is not considered significant when compared to expected revenues. Exceptions are provided for emergency situations and where approaches are authorized.

Because of this certification, a regulatory flexibility analysis was not prepared.

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

This proposed rule contains a new, but minor, collection-of-information requirement subject to the Paperwork Reduction Act. Persons operating vessels and involved in certain other activities may need to contact NMFS, the U.S. Coast Guard or other agencies, usually by VHF radio, to explain that an emergency situation exists or to respond to instructions concerning how to avoid right whales. This proposed rule is being submitted to the Office of Management and Budget (OMB) for review and approval. The average reporting burden is estimated to be 0.25 hrs (15 minutes per call) for each radio contact or similar type of report with an estimate of 30 reported sightings per year. This would equal a total of 7.5 hrs of reporting annually. An increased number of sightings would result in a linear increase in the total hours. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see ADDRESSES).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

The Assistant Administrator for Fisheries, NOAA, is preparing an environmental assessment (EA) under the National Environmental Policy Act for these proposed regulations and is expected to complete that EA shortly. When the EA is completed a notice will be placed in the Federal Register announcing that it is available.

List of Subjects

50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Transportation.

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: August 1, 1996.

C. Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set forth out in the preamble, 50 CFR part 217 and part 222 are proposed to be amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1531–1544; and 16 U.S.C. 742a *et seq.*; unless otherwise noted.

2. In section 217.12, the definitions of ''Territorial sea'', ''Underway'', and ''Vessel'' are added in alphabetical order to read as follows:

§ 217.12 Definitions.

* * * * *

Territorial sea means the 12-nautical mile (22 km) maritime zone set forth in Presidential Proclamation 5928, dated December 27, 1988 (3 CFR, 1988 Comp., p. 547).

* * * * *

Underway, with respect to a vessel, means that the vessel is not at anchor, or made fast to the shore, or aground.

* * * * *

Vessel includes every description of watercraft, including nondisplacement craft and seaplanes, used or capable of being used as a means of transportation on water.

* * * * *

PART 222—ENDANGERED FISH OR WILDLIFE

3. The authority citation for part 222 is revised to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; subpart D also issued under 16 U.S.C. 1361 *et seq.*

Subpart D—Special Prohibitions

4. Section 222.32 is added to subpart D to read as follows:

§ 222.32 Approaching northern right whales.

(a) *Definitions.* As used in this section:

(1) *To approach head-on* means to move directly toward a whale, to move on a path that is within 30 degrees of a line directly toward a whale, or to move on a path that will intercept or is likely to intercept a whale.

(2) *Right whale* means any whale that is a member of the western North Atlantic population of the northern right whale (*Eubalaena glacialis*).

(b) *Prohibitions.* Except as authorized under paragraph (d) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, to solicit another to commit, or cause to be committed any of the following acts with respect to any right whale:

(1) Operate an aircraft within 1,500 feet (460 m) of a right whale;

(2) Cause a vessel or other object to approach within 500 yards (460 m) of a right whale;

(3) Approach by any means within 500 yards (460 m) of a right whale;

(4) Cause a vessel to approach a right whale head-on from any distance once the right whale is observed or should be observed by the operator of a vessel using due diligence, and once there has been time to alter the heading of the vessel consistent with safe vessel operation procedures;

(5) Cause a vessel to be turned, positioned, or maneuvered in a manner to intercept a right whale; or

(6) Fail to undertake required right whale avoidance measures.

(c) *Right whale avoidance measures.* Right whale avoidance are all actions necessary to avoid any taking of a right whale, as prohibited under Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* or the ESA; all actions necessary to comply with instructions from NMFS, the U.S. Coast Guard, the U.S. Navy, or a port authority concerning the avoidance of right whales; and, unless inconsistent with these actions, if a person, vessel, aircraft or other object is within 500 yards (460 m) of a right whale, appropriate steps to increase that person or object's distance from the right whale as follows:

(1) *Sudden changes in operation.* Sudden changes in direction or speed, including sudden efforts to stop or reverse direction, sudden changes in engine speed, use of bow thrusters, sudden changes in propeller pitch, or other actions that may disturb or harass a right whale must be avoided unless such action is necessary for safety reasons or, if applicable, is necessary for safe aircraft or vessel operation.

(2) *Consistent speed and direction.* If a person, aircraft, vessel or other object is moving away from a right whale, a constant or approximately constant speed and direction must be maintained.

(3) *Changing speed and direction.* If a person, aircraft, vessel or other object is moving toward a right whale, expeditious efforts must be made to change direction away from the right whale and to reduce speed or to shift the motor of a motor vessel into neutral. Once the person, aircraft, vessel or other object is headed away from the right whale or has stopped or reduced speed to a minimum, efforts must be made to move slowly but deliberately and steadily in a direction away from the right whale.

(4) *Moving away from a northern right whale.* If a person is floating or moving slowly in the water, if a helicopter or other aircraft is hovering or moving very slowly, or if a vessel is underway but stationary or operating at very slow speeds and if that person, aircraft or vessel has been or is being approached by a right whale, efforts must be made to move slowly but deliberately and steadily in a direction away from the right whale.

(5) *Vessels or aircraft restricted in ability to maneuver.* If a vessel is restricted in its ability to maneuver and because of those limitations cannot comply with paragraphs (c)(1) through (c)(4) of this section, and undertakes reasonable efforts to maximize distance from and avoid interactions with the right whale, then aircraft or vessel operations may continue notwithstanding the fact that a northern right whale is within 500 yards (460 m).

(6) *Vessels or aircraft not underway or in operation.* Paragraphs (c)(1) through (c)(5) of this section do not apply to a vessel that is not underway or to an aircraft that is not in operation including a seaplane that is not underway or any aircraft that is on shore or onboard a vessel.

(d) *Exceptions.* The prohibitions specified under paragraph (b) of this section do not apply to:

(1) An activity authorized in a permit issued under subpart C (Endangered Fish or Wildlife Permits) of this part or to an activity specifically authorized by NMFS in an incidental take statement, incidental take permit or similar authorization; or

(2) Emergency situations where compliance with those prohibitions would present a threat to the safety, health or life of a person, would present a significant threat to a vessel or aircraft, or would pose a threat to the safety, health or life of a right whale. A person who claims this type of exception has the burden to prove that the exception is applicable. If possible and if appropriate under the circumstance, a person in an emergency situation should contact by telephone or radio communication NMFS, the U.S. Coast Guard, local port authority, or local law enforcement officials and describe the circumstances surrounding the emergency situation.

[FR Doc. 96–20025 Filed 8–1–96; 4:32 pm]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 61, No. 153
Wednesday, August 7, 1996

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

Submission for OMB Review; Comment Request

August 2, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Department Clearance Officer, USDA, PACC–IRM, Ag Box 7630, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

- Food and Consumer Service

Title: Child Nutrition Labeling Program.

Summary: The Food and Consumer Service reviews the manufacturer's product formulation to determine the contribution a serving of the product makes towards the food based meal pattern requirements.

Need and Use of the Information: The information is used in determining the contribution foods make toward the meal pattern requirements of the child nutrition programs.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 628.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,274.

Donald E. Hulcher,
Deputy Departmental Clearance Officer.
[FR Doc. 96–20103 Filed 8–6–96; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Timber Sale Contracts; Change in Stumpage Rate Adjustment Procedure

AGENCY: Forest Service, USDA.

ACTION: Proposed policy; request for comment.

SUMMARY: The Forest Service is proposing to eliminate the stumpage rate adjustment procedure used to adjust timber sale contract tentative rates (bid rates) on most timber sales held in the western states, except for Alaska. Under current stumpage rate adjustment procedures, 50 percent of the difference between current and base lumber price indices is added to tentative rates during periods of increasing lumber prices and 100 percent of the difference is subtracted from tentative rates during periods of declining prices. The Forest Service is proposing to eliminate the procedure for stumpage rate adjustment entirely. The effect of this proposal would be to equalize the risk of lumber price fluctuations between purchasers and the Forest Service on future timber sale contracts. This proposal will also satisfy Office of Inspector General audit recommendations.

DATES: Comments must be received in writing by October 7, 1996.

ADDRESSES: Send written comments to Director, Timber Management Staff (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed policy in the Office of the Director of Timber Management Staff, 3rd Floor NW, Auditor's Building, 14th & Independence, S.W., Washington, DC, between the hours of 8:00 AM and 4:00 PM. Those wishing to inspect comments are encouraged to call ahead (202) 205–0893 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT:

Rex Baumback, Timber Management Staff, (202) 205–0855,

SUPPLEMENTARY INFORMATION:

Background

The Forest Service sells timber to private purchasers through competitive bidding. The Agency awards the timber sale contract to the responsible bidder submitting the highest qualified bid.

Title 36, Code of Federal Regulations, Part 223 allows for the adjustment of contract (stumpage) rates during the term of a timber sale contract. These regulations state that:

> Timber may be appraised and sold at a lump-sum value or at a rate per unit of measure which rate may be adjusted during the period of the contract and as therein specified in accordance with formulas or other equivalent specifications for the following reasons: (a) Variations in lumber or other product value indices between the price index base specified in the contract and the price index actually experienced during the cutting of the timber. * * *

The Western Wood Products Association is the Forest Service's contractor to supply the lumber price indices used for stumpage rate adjustment.

In the western states, except Alaska, most timber sales with contract terms exceeding 1 year include a provision which allows contract rates to be adjusted during the term of the contract by the use of lumber price indices. The purpose of the stumpage rate adjustment procedure is to allow a timber sale purchaser's stumpage payments to follow the price trends of the primary forest product (lumber) manufactured from National Forest System timber. This procedure helps reduce the risk of loss to a timber purchase holding a timber sale contract during periods of declining lumber prices and benefits the Government by increasing stumpage receipts during periods of rising lumber prices.

The stumpage rate adjustment procedure was established by the Forest Service in the 1950's to reduce the risk, both to industry and the Government, of holding long-term timber sale contracts. In the 1950's and 1960's, timber sale contract periods often exceeded 10 years and the procedure was a means to reduce the risk to both parties due to price fluctuations in the lumber market. During this era, stumpage rates would vary, either up or down, by 50 percent of the change in lumber prices.

In 1971, with the introduction of Forest Service Form 2400–6 Timber Sale

Contract, the initial stumpage rate adjustment procedure was changed to the current formula which provides for stumpage prices to increase by 50 percent of the change in lumber prices when lumber prices are rising and to decrease by 100 percent of the change in lumber prices when lumber prices are falling. The purpose of this new adjustment was to account for increased costs to timber sale purchasers during the course of the contract term.

Originally, the use of the stumpage rate adjustment procedure was not used in western Washington and Oregon. On March 31, 1983, it was expanded to include western Washington and Oregon, as a means of reducing a purchaser's risk from excessive bidding and to adjust for decreases in lumber prices during the term of timber sales contracts.

In September 1991, the Department of Agriculture Office of Inspector General, issued a report (Audit Report No. 08099–122–SF dated 9/91—Stumpage Rate Adjustment on Timber Sales) which states that the 50 percent upwards and 100 percent downwards stumpage rate adjustment procedure lowers the risk of market fluctuations to the purchaser at the monetary expense of the Government. The audit recommended either eliminating the stumpage rate adjustment procedure or modifying it so that adjustments to stumpage are the same percentage for both periods of rising and falling lumber prices.

In response to the Office of Inspector General audit, the Forest Service is proposing to eliminate the stumpage rate adjustment procedure by amending internal agency direction. Under this proposal, timber sale contracts would be advertised and awarded with fixed (flat) stumpage rates in the future, and the lumber price indices currently used by the Forest Service would not be used after December 31, 1996. In accordance with contract provision C(T)3.21—Unavailable Index, purchasers with stumpage rate adjustment contracts still in effect when the policy is adopted would be offered the opportunity to convert to flat rates or to a suitable replacement index for lumber prices developed from the Bureau of Labor Statistics' Producer Price Index or appropriate trade journals.

Summary

The Forest Service is seeking comment on the following proposed direction that would be issued to agency personnel in chapter 2430 of the Forest Service Manual:

FSM 2431.34–Stumpage Rate Adjustment. Stumpage rate adjustment procedures are no longer to be included in Forest Service timber sale contracts. Instead, advertise all timber sales on a flat rate basis.

Comments received on this proposed policy will be considered in adoption of the final policy, notice of which will be published in the Federal Register.

Regulatory Impact

This proposed policy has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant policy. This policy will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This policy will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed policy is not subject to OMB review under Executive Order 12866.

Moreover, this proposed policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that act.

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Department has assessed the effects of this policy on State, local, and tribal governments and the private sectors. This action 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.

Environmental Impact

This proposed action falls within a category of actions excluded from documentation in an Environmental Impact Statement and an Environmental Assessment. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's preliminary assessment is that this policy falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final policy.

Controlling Paperwork Burdens on the Public

The proposed policy does not require any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 not already approved for use and, therefore, imposes no additional paperwork burden on the public.

Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

Comments Invited

The Forest Service invites written comments on the proposed policy. The agency will analyze and consider comments received in adopting the final policy. Notice of the final policy, including discussion of comments received, will be published in the Federal Register.

Dated: August 1, 1996.

David G. Unger,

Associate Chief.

[FR Doc. 96–20099 Filed 8–6–96; 8:45 am]

BILLING CODE 3410–11–M

CIVIL RIGHTS COMMISSION

Hearing on Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—Los Angeles

AGENCY: Commission on Civil Rights.

ACTION: Notice of Hearing.

SUMMARY: Notice is hereby given pursuant to the provisions of the Civil Rights Commission Amendments Act of 1994, Section 3, Pub. L. 103–419, 108 Stat. 4338, as amended, and 45 CFR section 702.3, that a public hearing of the U.S. Commission on Civil Rights will commence on Thursday, September 12 through September 13, 1996, beginning daily at 8:00 a.m., in the Crowne Ballroom, Center Wing, at the Crowne Plaza, 3540 South Figueroa Street, Los Angeles, California 90007.

The purpose of the hearing is the collect information within the jurisdiction of the Commission, under 45 CFR section 702.2, related particularly to the administration of justice, police-community relations, possible racial and gender bias within law enforcement, and the interaction between Federal and local law

enforcement agencies in Los Angeles in order to examine underlying causes of racial and ethnic tensions in the United States.

The Commission is authorized to hold hearings and to issue subpoenas for the production of documents and the attendance of witnesses pursuant to 45 CFR section 701.2(c). The Commission is an independent bipartisan, factfinding agency authorized to study, collect, and diseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.

Hearing impaired persons who will attend the hearing and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division, at (202 376–8105 (TDD (202) 376–8116), at least five (5) working days before the scheduled date of the hearing.

FOR FURTHER INFORMATION CONTACT: Barbara Brooks, Press and Communications (202) 376–8312.

Dated: August 1, 1996.

Stephanie Y. Moore,

Acting Solicitor.

[FR Doc. 96–20119 Filed 8–6–96; 8:45 am]

BILLING CODE 6335–01–M

Hearing on Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—Mississippi Delta

AGENCY: Commission on Civil Rights.

ACTION: Notice of Hearing.

SUMMARY: Notice is hereby given pursuant to the provisions of the Civil Rights Commission Amendments Act of 1994, section 3, Pub. L. 103–419, 108 Stat. 4338, as amended, and 45 CFR section 702.3, that a public hearing of the U.S. Commission on Civil Rights will commence on Wednesday, September 18, through Friday, September 20, 1996, beginning daily at 8:00 a.m., in the Mississippi Room at the Ramada Inn, 2700 U.S. Highway 82 East, Greenville, Mississippi 38704.

The purpose of the hearing is to collect information within the jurisdiction of the Commission, under 45 CFR Section 702.2, related particularly to voting rights, public education, and equality of economic opportunity in the Mississippi Delta region in order to examine underlying causes of racial and ethnic tensions in the United States.

The Commission is authorized to hold hearings and to issue subpoenas for the production of documents and the attendance of an independent bipartisan, factfinding agency authorized to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.

Hearing impaired persons who will attend the hearing and require the services of a sign language interpreter, and should contact Betty Edmiston, Administrative Services and Clearinghouse Division at (202) 376–8105 (TDD (202) 376–8116), at least five (5) working days before the scheduled date of the hearing.

FOR FURTHER INFORMATION CONTACT: Barbara Brooks, Press and Communications (202) 376–8312.

Dated: August 1, 1996.

Stephanie Y. Moore,

Acting Solicitor.

[FR Doc. 96–20120 Filed 8–6–96; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–802; A–834–802; A–844–802]

Suspension Agreements on Uranium from the Russian Federation, Kazakstan, and Uzbekistan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final decision.

SUMMARY: The Department of Commerce's final decision regarding natural uranium from the Russian Federation, Kazakstan, and Uzbekistan which is enriched in a third country prior to importation into the United States.

EFFECTIVE DATE: August 7, 1996.

FOR FURTHER INFORMATION CONTACT: James Doyle or Alexander Braier, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone: (202) 482–0172 or (202) 482–1324, respectively.

Background

On March 27, 1995, the Department of Commerce (the Department) and the Republic of Kazakstan signed an amendment to the Kazakstani uranium suspension agreement. In part, this amendment provided that the quantitative restraints on Kazakstani-origin uranium include all uranium ore from Kazakstan that is milled into U_3O_8 and/or converted into UF_6 and/or enriched in U^{235} in another country prior to direct and/or indirect importation into the United States (60 FR 25692, 25693 (May 12, 1995)). In light of the fact that similar amendments were being considered for Uzbekistan and the Russian Federation, on September 22, 1995, the Department solicited contract-specific information from U.S. utilities which hold contracts for Kazakstani, Uzbek, or Russian uranium in order to assess the effect such an amendment has on importations pursuant to such contracts (60 FR 49259). The Department received five responses to its Federal Register notice.

On October 13, 1995, the Department and the Government of Uzbekistan signed an amendment providing the same quantitative restraints on Uzbek-origin uranium as those contained in the Kazakstani amendment (60 FR 55004 (October 27, 1995)). From January 22 to 26, 1996, and from February 19 to 23, 1996, the Department and the Ministry of Atomic Energy of the Russian Federation (MINATOM) held the fourth and fifth rounds of consultations regarding, among other issues, the enrichment of Russian-origin uranium in third countries. Consultations between MINATOM and the Department are ongoing.

On March 19, 1996, the Department published a proposed solution on the third country enrichment issue and solicited comments on this proposal by April 8, 1996 (61 FR 11185). The Department received 13 responses to its Federal Register notice. Based upon analysis of the parties' comments, discussion with the Petitioners and representatives for the affected utilities, and significant internal consideration, the Department detailed certain adjustments to the March 19, 1996, Federal Register proposed solution in its May 14, 1996, memorandum of Final Department Action on the Grandfathering of Third Country Enrichment of Subject Natural Uranium from Joseph A. Spetrini to Paul L. Joffe.

In this memorandum, the Department requested that all eligible contracts (as defined in the Department's March 19, 1996, Federal Register notice) be submitted in their entirety within 10 days in order to establish an upper limit to the volume of annual deliveries. The Department further requested that the utilities with eligible contracts provide the following information to the Department within 10 days: all prior deliveries made pursuant to their eligible contracts; the country of origin of the natural uranium concentrates for past and future permitted deliveries; and a certification that they permit Department verification of all information related to this matter, including, for example, requests for delivery and contracts signed with the enricher. In response to its request, the Department received five eligible contracts accompanied by the requested information and certifications.

The Department's March 19, 1996, Federal Register notice and May 14, 1996, memorandum and the eligible contracts and information received from the affected utilities, contributed to the Department's final decision regarding natural uranium from the Russian Federation, Kazakstan, and Uzbekistan which is enriched in a third country prior to importation into the United States. The specific elements of this decision are included in the attached Annex.

Dated: August 1, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

Annex—Third Country Enrichment of Subject Uranium Decision

The Department of Commerce's decision regarding the issue of the importation of subject uranium enriched in third countries permits the entry of portions of the volume specified in certain contracts. The contracts must have been signed by March 27, 1995, which was the effective date of the first amendment to a uranium suspension agreement which addressed this issue. The Department will divide the volume of eligible contracts into two portions: (1) 75% of the volume will be permitted entry without the requirement of matching with an equal amount of newly-produced U.S. uranium; and (2) the remaining 25% will be permitted entry only if matched with an equal amount of newly-produced U.S. uranium. The decision also establishes certain procedures necessary for its efficient administration within the auspices of the suspension agreements and the Tariff Act of 1930, as amended.

Eligible Contracts and Permitted Volumes

- An eligible contract is defined as a natural uranium supply contract signed before March 27, 1995, that was identified in response to, and within the deadlines established by, the Department's September 22, 1995, Federal Register notice. No other natural uranium contracts, regardless of origin, shall be eligible for inclusion within the terms of the third country enrichment decision;
- The permitted volume for each contract is the nominal volume contained in each eligible contract.[1] If there is no specific nominal volume identified in the contract, the permitted volume shall be the midpoint between the highest and lowest volumes stipulated in the contract. For any contract containing an option for an additional volume which was exercised prior to March 27, 1995, the permitted volume shall be the nominal/midpoint volume of the eligible contract plus the volume of the exercised option. Similarly, for any contract which was amended prior to March 27, 1995, to provide for an additional volume, the permitted volume shall be the nominal/midpoint volume plus the volume specified in such amendment. For any contract containing an option for an additional volume which was exercised prior to March 27, 1995, and which was amended prior to March 27, 1995, to provide for an additional volume, the permitted volume shall be the sum of the nominal/midpoint volume, the optional volume, and the volume specified in the amendment;
- For each eligible contract, 75 percent of the permitted volume will be allowed entry with no documents required beyond those identified below;
- For each eligible contract, up to 25 percent of the remaining permitted volume will be allowed entry only if such importation is pursuant to a matching sale contract for an equal amount of newly produced U.S. uranium that is presented, along with complete supporting documentation, to the Department by September 3, 1996;
- Upon completion of all required actions and notification to the Department on or before September 3, 1996, a utility may increase the permitted volume of its pre-March 17, 1995, eligible contract to the contract's maximum only if the utility also presents a matching contract(s) and complete supporting documentation for 25 percent of the contract's maximum volume to the Department by September 3, 1996; and
- All prior deliveries of uranium made pursuant to eligible contracts will be deducted from the contract's permitted volume.

Administrative Procedures

- All eligible contracts must have been submitted to the Department by May 24, 1996, and are releasable in their entirety only to qualified representatives of those interested parties which specifically request and are granted access under administrative protective order;
- By May 24, 1996, all holders of eligible contracts must have notified the Department of all prior deliveries made pursuant to their eligible contracts, specified the country of origin of the natural uranium concentrates for past and future permitted deliveries, and provided a certification that they permit Department verification of all information related to this matter, including, for example, requests for delivery and contracts signed with the enricher. Pursuant to the March 19, 1996, Federal Register notice, all holders of eligible contracts must have agreed to permit Department verification of information regarding shipment of the permitted volumes, including, but not limited to, analyses of the tails assays and enrichment percentages to derive feed-to-product ratios;
- In order to facilitate Customs clearance of shipments of permitted volumes, holders of eligible contracts shall provide the Department with appropriate shipping information at least 10 days in advance of the date the shipment is due to reach the United States. Upon receipt of complete and accurate shipping information, the Department will provide Customs with clearance within five days. Certifications or licenses from the appropriate suspension agreement countries shall not be required (see document requirements below);
- The Department will administer each eligible contract on a contract-by-contract basis, directly with the utility which is a party to the eligible contract; and
- The Department will administer any such matching sales consistent with the Department's existing practice, as specified in Section IV of the Amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (the Amended Russian Agreement), and appropriate

[1] Most natural uranium supply contracts specify a nominal volume around which buyers and sellers expectations converge. Typically these contracts also bracket the target volume with minimum and/or maximum volumes.

Statements of Administrative Intent, and any subsequent amendments incorporating such practice.

Documents Required for Shipment Clearance

For both unmatched and matched shipments under eligible contracts, the information identified below must be provided to the Department as early as possible, but in no case later than ten days, prior to importation into the United States:

1. Contract information, including the holder of the grandfathered contract (company's name), the particular eligible contract, whether the shipment volume is matched or unmatched, and, if matched, the applicable matched sale;

2. The following shipment information regarding the uranium to be imported: volume, value, port of export, port of entry, exporter and importer of the merchandise, party for whose account the material is being imported, shipment date, vessel name and estimated date of arrival;

3. Bills of lading, airway bills or other documentation from a third party showing the amount, type and value of the shipment;

4. Packing lists/shipping specifications;

5. Request(s) for delivery from the utility(ies)/customer(s) to the natural uranium supplier(s) and enricher(s); if not otherwise included in these requests for delivery, the enrichment percentage and tails assay must be provided;

6. Entry number from Customs (if available); and

7. Certification(s) from the party for whose account the uranium is being imported addressed to Customs which state the following:

a. The uranium being imported was not obtained under any arrangement, swap, exchange or other transaction designed to circumvent the agreements with Kazakstan, Kyrgyzstan, the Russian Federation, and/or Uzbekistan and/or the antidumping duty on Ukraine and/or the export limits for uranium pursuant to the March 27, 1995, amendment to the Kazakstani agreement and the October 13, 1995, amendment to the Uzbek agreement;

b. The country of origin of the mining and, if applicable, conversion, enrichment and/or fabrication; and

c. The imported material will not be sold, loaned, swapped or utilized other than for delivery to the United States end-user for consumption in accordance with Section II(h) of the amended Russian suspension agreement, Section II(e) of the amended Kazakstani suspension amendment or Section II(f) of the amended Uzbek suspension agreement, as appropriate.

Total Volumes

The total volume of all eligible contracts submitted to the Department in response to its May 14, 1996, memorandum is 11,531,154 pounds U_3O_8 equivalent on the basis of maximum values; correspondingly, 25 percent of this maximum value total is 2,882,789 pounds U_3O_8 equivalent. In accordance with Section IV.B ''Per Company Limits for Matched Imports'' of the Amended Russian Agreement, a U.S. producer may match up to 20 percent of the available material under these eligible contracts. Therefore, U.S. producers intending to enter into matching sales with holders of eligible contracts may match up to 576,558 pounds U_3O_8 equivalent of uranium.

[FR Doc. 96–20124 Filed 8–6–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–333–401]

Cotton Shop Towels From Peru: Intent To Terminate Suspended Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent to terminate suspended investigation.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to terminate the suspended countervailing duty investigation of cotton shop towels from Peru. Domestic interested parties who object to termination of the suspended investigation must submit their comments in writing not later than 30 days from the publication of this notice.

EFFECTIVE DATE: August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Rick Johnson or Jean Kemp, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

The Department may terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Department's regulations (at 19 C.F.R. 355.25(d)(4)), we are notifying the public of our intent to terminate the suspended countervailing duty investigation of cotton shop towels from Peru, for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with section 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (as defined in sections 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to terminate the suspended investigation pursuant to this notice, we shall conclude that the suspension agreement is no longer of interest to interested parties and proceed with the termination. However, if a domestic interested party does object to the Department's intent to terminate pursuant to this notice, the Department will not terminate the suspended investigation.

Opportunity To Object

Not later than 30 days from the publication of this notice, domestic interested parties may object to the Department's intent to terminate this suspended investigation. Any submission objecting to the termination must contain the name and case number of the suspension agreement and a statement that explains how the objecting party qualifies as a domestic interested party under sections 355.2 (i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: July 26, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 96– 20123 Filed 8–6–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 071596F]

Advisory Committee and Species Working Group Technical Advisor Appointments

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

ACTION: Nominations.

SUMMARY: NMFS is soliciting nominations to the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) as established by the Atlantic Tunas Convention Act (ATCA). NMFS also is soliciting nominations for technical advisors to the Advisory Committee's species working groups.

DATES: Nominations are due by September 6, 1996.

ADDRESSES: Nominations to the Advisory Committee or to a species working group should be sent to: Mr. Will Martin, Deputy Assistant Secretary for International Affairs, NOAA, Department of Commerce, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230, with a copy sent to Kim Blankenbeker, Office of International Affairs, Room 14229, NMFS, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kim Blankenbeker, 301–713–2276.

SUPPLEMENTARY INFORMATION: Section 971b of the ATCA (16 U.S.C. 971 *et seq.*) requires that an advisory committee be established that shall be composed of (1) not less than five nor more than 20 individuals appointed by the U.S. Commissioners to ICCAT who shall select such individuals from the various groups concerned with the fisheries covered by the ICCAT Convention; and (2) the chairs (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fishery Management Councils. The Advisory Committee shall, to the maximum extent practicable, consist of an equitable balance among the various groups concerned with these fisheries.

Each member of the Advisory Committee appointed under item (1) above shall serve for a term of 2 years and shall be eligible for reappointment. Members of the Advisory Committee may attend all public meetings of the ICCAT Commission, Council, or any Panel and any other meetings to which they are invited by the ICCAT Commission, Council, or any Panel. The Advisory Committee shall be invited to attend all nonexecutive meetings of the U.S. Commissioners to ICCAT and, at such meetings, shall be given the opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the ICCAT Commission. Members of the Advisory Committee shall receive no compensation for their services as such members. The Secretary of Commerce and the Secretary of State may pay the necessary travel expenses of members of the Advisory Committee.

The terms of 18 of the 20 appointed Advisory Committee members expire on December 31, 1996. The other two terms will expire on December 31, 1997. For the 18 appointments expiring at the end of this year, new appointments will be made this fall but will not take effect until January 1, 1997.

Section 971b1 of the ATCA specifies that the U.S. Commissioners may establish species working groups for the purpose of providing advice and recommendations to the U.S. Commissioners and the Advisory Committee on matters relating to the conservation and management of any highly migratory species covered by the ICCAT Convention. Any species working group shall consist of no more than seven members of the Advisory Committee and no more than four scientific or technical personnel, as considered necessary by the Commissioners. Currently, there are four species working groups advising the Advisory Committee and the U.S. Commissioners. Specifically, there is a Bluefin Tuna Working Group, a Swordfish Working Group, a Billfish Working Group, and a BAYS (Bigeye, Albacore, Yellowfin, and Skipjack) Working Group. Technical advisors to a species working group serve at the pleasure of the U.S. Commissioners; therefore, the Commissioners can choose to alter appointments at any time.

Nominations to the Advisory Committee or to a species working group should include a letter of interest and a resumé or curriculum vitae. Letters of recommendation are useful but not required. Self-nominations are acceptable. When making a nomination, please clearly specify which appointment (Advisory Committee member or technical advisor to a species working group) is being sought. Requesting consideration for placement on both the Advisory Committee and a species working group is acceptable. Those interested in a species working group technical advisor appointment should indicate which of the four working groups is preferred. Placement on the requested species working group, however, is not guaranteed.

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

Dated: August 1, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–20131 Filed 8–6–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 073096C]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting.

DATES: This meeting will be held on August 29, 1996, from 8:30 a.m to 3:00 p.m.

ADDRESSES: This meeting will be held at the Radisson Inn New Orleans Airport, 2150 Veterans Memorial Boulevard, Kenner, LA; telephone: 504–467–3111.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Richard Hoogland, Biologist; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: A panel of concerned representatives of Mississippi and Louisiana recreational and commercial fishing groups, conservation organizations, academia and state and federal resource agencies will gather to review and discuss marine fishery habitat issues.

The Mississippi/Louisiana group is part of a three-unit Habitat Protection Advisory Panel (AP) to the Gulf of Mexico Fishery Management Council. The principal role of the advisory panels is to assist the Council in attempting to maintain optimum conditions within the habitat and ecosystems supporting the marine resources of the Gulf of Mexico. Advisory panels serve as a first alert system to call to the Council's attention proposed projects being developed and other activities which may adversely impact the Gulf marine fisheries and their supporting ecosystems. The panels may also provide advice to the Council on its policies and procedures for addressing environmental affairs.

At this meeting, the AP will review coastal restoration projects in Louisiana, oil spill response and natural resource damage assessment, hypoxia in the Gulf and ways to address it, and Mississippi River water diversion projects.

A copy of the agenda can be obtained by contacting the Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other

auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by August 22, 1996.

Dated: July 31, 1996.

Richard W. Surdi,

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

[FR Doc. 96–20134 Filed 8–6–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 073096B]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council and its advisory entities will hold public meetings.

DATES: The Council meeting will be held August 20–23, 1996. It will begin on August 20, at 8 a.m. in a closed session (not open to the public) to discuss litigation. The open session begins at 8:30 a.m. The Council meeting reconvenes at 8 a.m. August 21, and will adjourn when Council business has been completed. Other advisory meetings will be held August 18–22, 1996. See **SUPPLEMENTARY INFORMATION** for meeting agendas.

ADDRESSES: The meetings will be held at the Red Lion Hotel - Columbia River, 1401 North Hayden Island Drive, Portland, OR 97217; telephone: (503) 283–2111.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda:

A. Call to Order

B. Administrative and Other Matters

1. Report of the Budget Committee,

2. Status of legislation,

3. Summary of Council Chairs' meeting,

4. Anchovy biomass and quotas for 1996–1997,

5. Research and data needs, and

6. Composition of Scientific and Statistical Committee, Advisory Panel, and Habitat Steering Group.

C. Salmon Management

1. Sequence of events and status of fisheries, and

2. Plan amendments.

D. Habitat Issues

1. Report of the Steering Group.

E. Pacific Halibut Management

1. Report on the July 1996 interim meeting of International Pacific Halibut Commission, and

2. Proposed changes to regulations for 1997.

F. Groundfish Management

1. Limited entry fixed gear sablefish endorsement (Plan Amendment),

2. Limited entry fixed gear sablefish harvest regime for 1997,

3. Status of regulations,

4. Status of fisheries and inseason adjustments,

5. Limited Entry Vessel Platoon System,

6. Preliminary stock assessments, harvest levels and other specifications for 1997,

7. Pacific whiting allocation, season framework, and salmon bycatch,

8. California gillnet regulations in the exclusive economic zone,

9. Restrictions on limited entry permit transfers,

10. Landing and disposition of fish exceeding trip limits, and

11. Other proposed measures for 1997, if any.

Other meetings:

The Groundfish Subcommittee of the Scientific and Statistical Committee will meet on August 18, at 7 p.m.

The Groundfish Management Team will convene on August 19, at 8 a.m. to address groundfish management items on the Council agenda.

The Habitat Steering Group will convene on August 19, at 10 a.m.

The Scientific and Statistical Committee will convene on August 19, at 8 a.m. and August 20, at 8 a.m. to address scientific issues related to Council agenda items.

The Budget Committee will convene on August 19, at 2 p.m..

The Groundfish Advisory Subpanel will convene on August 20, at 8 a.m. and will continue to meet on August 21, and on August 22.

The Enforcement Consultants meet on August 20, at 7 p.m. to address enforcement issues related to Council agenda items.

Detailed agendas for the above advisory meetings will be available after July 26, 1996.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: August 1, 1996.

Richard W. Surdi,

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

[FR Doc. 96–20133 Filed 8–6–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 080196A]

Endangered Species; Permits

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

ACTION: Receipt of an application for an individual incidental take permit (P211K).

SUMMARY: Notice is hereby given that the Oregon Department of Fish and Wildlife at Portland, OR (ODFW) have applied in due form for a permit that would authorize an incidental take of an endangered species.

DATES: Written comments or requests for a public hearing on this application must be received on or before September 6, 1996.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: ODFW requests a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

ODFW (P211K) requests a 5-year permit for an annual incidental take of resident, fluvial, and anadromous, endangered, Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*) associated with the state of Oregon's recreational and commercial fisheries in the Umpqua River Basin. ODFW is charged by statute with the management and protection of the fish and wildlife resources of the State. An individual incidental take permit is requested since ODFW is responsible for establishing the State's fishing regulations and controls fishing activities by issuing licenses to citizens.

Resident (non-migratory) cutthroat trout are present in most small tributary streams to Smith River and the mainstem, South, and North Umpqua Rivers. Fluvial (migrating within rivers) cutthroat trout are potentially present throughout the entire mainstem North Umpqua River from the mouth to Soda Springs Dam during the entire year. Fluvial cutthroat trout are also present in Smith River and some of the larger tributaries. In the mainstem South Umpqua River, fluvial cutthroat trout are potentially present above Jackson Creek year round. Due to warm water, fluvial fish are believed to be present below Jackson Creek and downstream throughout the mainstem Umpqua River only during late fall through early summer (November-June). Fresh run, adult, searun cutthroat trout first enter the mainstem Umpqua River in June and July and proceed upstream into cooler tributary streams. Kelts (fish that have spawned) drop out of spawning tributaries and head back to the estuary/ocean during February through May. Smolts (juveniles) migrate downstream through the Smith, North, South, and mainstem Umpqua Rivers during the period March through May.

ESA-listed cutthroat trout could be exposed to various fisheries in the Umpqua River Basin. The actual probability of incidental take varies among the fisheries. Those species that may be present and fished for in the Umpqua River Basin include spring chinook salmon, fall chinook salmon, coho salmon, summer and winter steelhead trout, hatchery rainbow trout, smallmouth bass, striped bass, shad, and white and green sturgeon.

ODFW included a conservation plan in their permit application that includes measures designed to minimize the incidental take of ESA-listed cutthroat trout. One such measure is the termination of hatchery rainbow trout releases in areas of the North and South Umpqua Rivers and, beginning in 1997, closing all remaining trout angling in the Umpqua River Basin, except the North Umpqua River above Soda Springs Dam where cutthroat trout do not occur. Other conservation measures include closing spawning habitat to fishing, maintaining beneficial time and area closures, periodic monitoring and evaluation programs, regulation enforcement, scientific research, recovery planning, and public education.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on this application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: August 1, 1996.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–20130 Filed 8–6–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

August 1, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 5, 1996.

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 these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–6717. 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); Uruguay Round Agreements Act.

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 60 FR 65299, published on December 19, 1995). Also see 60 FR 62396, published on December 6, 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.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 1, 1996.

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, 1995, 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 textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on August 5, 1996, you are directed to adjust the 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]
Sublevels in Group II	
338/339	1,849,635 dozen.
435	58,498 dozen.
438	19,310 dozen.
442	21,259 dozen.
638/639	2,202,161 dozen.
647/648	1,038,064 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

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,

Troy H. Cribb,

Chairman, Committee for the Implementatin of Textile Agreements.

[FR Doc.96–20076 Filed 8–6–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 7, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 1, 1996.

Kent H. Hannaman,

Acting Director, Information Resources Group.

Office of the Under Secretary

Type of Review: New.

Title: National ''What Works'' Evaluation for Adult English-as-a-second-language (ESL) Students.

Frequency: One time only.

Affected Public: Not-for-profit institutions; State, local or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 1,280; Burden Hours: 563.

Abstract: The Planning and Evaluation Service is conducting a five-year study to describe and identify effective ESL instruction for adults with limited literacy skills in six states: California, Florida, Illinois, New Jersey, New York and Texas. Phase 1 of the evaluation, for which clearance is being sought, is a descriptive study of all adult ESL providers in these states and selected sites providing adult ESL instruction. The information from the study will be used to develop descriptive profiles of the key features of adult ESL instruction, to help identify sites for Phase 2 of the study, and to obtain respondents' perception about ''what works'' for low-literate, adult ESL learners. Information will be collected from ESL administrators and instructors.

[FR Doc. 96–20052 Filed 8–6–96; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 6, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: August 1, 1996.

Kent H. Hannaman,

Acting Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: New.

Title: National Assessment of Educational Progress (NAEP)—Assessment of Reading, Writing, Civics and the Arts.

Frequency: One-Time.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 87,500; Burden Hours: 45,953.

Abstract: The NAEP, known as the Nation's Report Card, is the only national representative assessment of student achievement. It collects nationally comparable assessment results which are linked to student's background characteristics, characteristics of schools and teachers. This clearance request is clearance for the 1997 field test and for the 1998 full scale study which will focus on achievement in reading, writing, and civics. In the arts, the small scale but nationally representative sample of eighth grade students will be assessed using materials which were tested in the 1995 field testing.

[FR Doc. 96–20053 Filed 8–6–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT96–86–000]

Algonquin Gas Transmission Company; Notice of Refund Report

August 1, 1996

Take notice that on July 29, 1996, Algonquin Gas Transmission Company (Algonquin) tendered for filing a report of pursuant to Ordering Paragraph (C) of the Commission's February 22, 1996 order in Gas Research Institute (GRI), Docket No. RP95–124–000.

Algonquin states that on June 28, 1996, Algonquin received its share of the GRI refund totalling $760,140.00.

Algonquin states that on July 12, 1996, each eligible firm customers was credited their pro rata share of the GRI refund and will be reflected on their August 7, 1996 invoice for business on Algonquin during the month of July 1996.

Algonquin states that copies of the refund report has been served upon each of its affected customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 8, 1996. 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 Transco's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–20042 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–3–48–000]

ANR Pipeline Company; Notice of Informal Technical Conference

August 2, 1996.

On March 1, 1996, ANR Pipeline Company (ANR) tendered for filing Fifth Revised Sheet No. 19, Fourth Revised Sheet No. 92, and Original Sheet No. 92A of its FERC Gas Tariff, Second Revised Volume No. 1, to be effective April 1, 1996. The purpose of this filing, according to ANR, is to comply with the annual redetermination of the levels of ANR's Transporters Use (%) as required by ANR's currently effective tariff. The result of this redetermination is an overall increase in the fuel use percentages that comprise ANR's fuel matrix applicable to transportation service on its transmission facilities. On March 28, 1996, the Commission issued a letter order which required ANR to submit certain workpapers and reconciliations of data supporting its filing. On April 29, 1996, ANR submitted the requested information.

Upon review of the information submitted by ANR, on June 28, 1996, Staff requested certain additional information. By letter dated July 12, 1996, ANR responded to Staff's data request.

Upon review of the filing herein and the additional information submitted by ANR, the Staff has determined that it will hold an informal technical conference on this matter. In addition, several other parties have requested such a conference. A technical conference will therefore be held at 1:30 p.m., August 14, 1996, at 888 First Street, N.E., Washington, D.C., in Room 3M–2A. The parties should be prepared to support their conclusions with specific references to the work papers and information that have been provided to the Commission. Questions about this conference should be directed to Harris Wood, (202) 208–0224, or Louis Lieb (202) 208–0012.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–20098 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–668–000]

Columbia Gas Transmission Corporation; Notice of Petition for Declaratory Order and Application for Certificate

August 1, 1996.

Take notice that on July 26, 1996, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25325–1273, filed in Docket No. CP96–668–000 a petition pursuant to Section 16 of the Natural Gas Act (NGA) and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207 (a)(2)), requesting that the Commission issue an order declaring that certain existing facilities now functionalized as gathering facilities should be refunctionalized as transmission facilities. Columbia's filing also is an application pursuant to Section 7(c) of the NGA for a certificate to operate the facilities as jurisdictional transmission facilities, all as more fully set forth in the petition and application on file with the Commission and open to public inspection.

Columbia states that, in a related application filed in Docket No. CP96–386–000 on April 29, 1996, to spin-down certain of its gathering facilities to Columbia Natural Resources, Inc. (CNR), it mentioned that it would be filing the instant petition to refunctionalize certain gathering facilities to transmission. Columbia advises that some of these facilities are located between facilities to be sold to CNR and Columbia's transmission facilities. Columbia comments that such refunctionalization would eliminate the possibility that a shipper would pay gathering charges to both CNR and Columbia if, prior to the proposed abandonment, only one such gathering charge would have been paid.

Further, Columbia states that, since the following facilities for which it seeks refunctionalization would serve a transmission function, Columbia is requesting that they be certificated as jurisdictional transmission facilities:

Complete pipeline	Partial pipeline	Measuring station	Regulator station	Compressor station
B–26	V–2	804441	7470	Inez.

Complete pipeline	Partial pipeline	Measuring station	Regulator station	Compressor station
B–29	V–36	804127		
B–125	P–28	802859		
B–131	V–42	802928		
B–48	PW–4534	802938		
N–21	PW–4645	805981		
B–18 Loop	PW–4661			
P–118				
P–137				

Any person desiring to be heard or to make any protest with reference to said petition and application should on or before August 22, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385. 214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on the application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–20039 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–408–011]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 1, 1996.

Take notice that on July 29, 1996, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 the following changes to its FERC Gas Tariff effective June 6, 1996.

Substitute Third Revised Sheet No. 374

On June 5, 1996, Columbia filed revised tariff sheets to comply with the Commission's Order on Rearing issued May 21, 1996 in docket No. RP95–408–009. The Commission issued a letter order on July 19, 1996 (Letter Order) accepting the revised tariff sheets effective June 6, 1996, subject to certain conditions. The Letter Order required additional modifications to the tariff language of Section 16.5(h) of the General Terms and Conditions of Columbia's tariff to assure compliance with the Commission's May 21, 1996 Order on Rehearing. The instant filing revises Section 16.5(h) to comply with the Letter Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriation 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. 96–20044 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ96–8–23–000 and TM96–13–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 1, 1996.

Take notice that on July 30, 1996 Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets in the above captioned dockets, with a proposed effective date of August 1, 1996.

ESNG states that the revised tariff sheets included herein are being filed pursuant to Section 23 of the General Terms and Conditions of ESNG's Gas Tariff to reflect changes in ESNG's jurisdictional rates. The effective sales rates set forth herein reflect a decrease of $1.5746 per dt in the Demand Charge as measured against the corresponding rates in Docket No. TQ96–7–23–000, et. al., a regularly scheduled Quarterly PGA filed on July 2, 1996 for rates proposed to be effective August 1, 1996.

ESNG states that the instant filing also tracks rates attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco). The tracking portion of this filing is being made pursuant to Section 24 of the General Terms and Conditions of ESNG's FERC Gas Tariff.

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, 888 First 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 Section 385.211 and Section 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–20047 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–317–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

August 1, 1996.

Take notice that on July 29, 1996, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective September 1, 1996:

Third Revised Sheet No. 6
Second Revised Sheet No. 9
Second Revised Sheet No. 53
First Revised Sheet No. 54
Second Revised Sheet No. 59
Original Sheet No. 59A
Second Revised Sheet No. 60

Great Lakes also tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets to become effective September 1, 1996:

Sixth Revised Sheet No. 3–A
Fourth Revised Sheet No. 224
Fifth Revised Sheet No. 246
Sixth Revised Sheet No. 270
Sixth Revised Sheet No. 295
Third Revised Sheet No. 615

Great Lakes states that the proposed revised tariff sheets are being filed to reflect a revision to the methodology for allocating system fuel and other use gas, and the corresponding determination of Transporter's Use percentages, to reflect more distance sensitivity. Great Lakes further states that the proposed revised tariff sheets are being filed to revise the mechanics of its Transporter's Use mechanism so as to conform with the standards required by the Federal Energy Regulatory Commission's Order No. 587 issued July 17, 1996.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–20045 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EL94–45–001 and QF88–84–006]

LG&E-Westmoreland Southampton; Order Granting Rehearing in Part and Denying Rehearing in Part, and Announcing Policy Concerning Non-Compliance With the Commission's QF Regulations

Issued July 31, 1996.

On August 9, 1994, LG&E-Westmoreland Southampton (Southampton) filed a request for rehearing of the Commission's order issued in this proceeding on July 7, 1994. *LG&E-Westmoreland Southampton*, 68 FERC ¶ 61,034 (1994). In that order, the Commission denied the request by Southampton, the owner of a topping-cycle cogeneration facility, for waiver of the Commission's operating standard applicable to qualifying cogeneration facilities, *see* 18 CFR § 292.205 (1995), for calendar year 1992.

We will deny rehearing to the extent Southampton asks us to upset our decision to deny its request for waiver of section 205 of the Federal Power Act (FPA) to excuse its non-compliance during calendar year 1992 with the Commission's requirements for qualifying facility (QF) status. We will grant rehearing to the extent Southampton asks us to allow it to remain exempt during that year from the other requirements of the FPA, as well as certain other federal and state regulation. Because this is just one of several pending cases that present the Commission with the question of how to regulate previously certificated (or self-certificated) QFs that have been found to be in non-compliance with the Commission's QF regulations during some past period of operation, and in order to encourage respect for and compliance with those regulations, we take this opportunity to announce a policy of general application concerning the consequences of failing to retain QF status.

Background

We discuss the background of this proceeding in detail in the previous order. In brief, Southampton owns a 62.6 MW topping-cycle cogeneration facility located in Franklin, Virginia that failed to meet the Commission's operating standard for qualifying cogeneration facilities during calendar years 1991 and 1992. Southampton previously was granted limited waiver to excuse non-compliance for calendar year 1991. In this proceeding, Southampton requested an additional waiver to excuse non-compliance for calendar year 1992. Southampton sought to justify a second waiver on the fact that, among other things, the facility was engaged in start-up and testing operations during a portion of 1992, and that the third-party plant operator mistakenly delivered (without Southampton's knowledge) steam produced in a non-sequential manner to the thermal host.

The Commission, after balancing all relevant considerations, found this explanation to be insufficient to justify a second waiver of its QF requirements. The Commission found particularly troubling the fact that Southampton, in justifying waiver for calendar year 1991, previously represented to the Commission that it expected to comply with all applicable QF requirements during calendar year 1992 and later years. The Commission also found that the circumstances leading to Southampton's second waiver request were not entirely outside of its control: ''We believe that the Commission should not, through its waiver authority, insulate a QF from the risks of non-performance due to operator error or poor management.'' 68 FERC at 61,113.

Finally, the Commission noted that Southampton may have operated as a public utility within the meaning of the Federal Power Act (FPA) during the period of time in which it failed to comply with the Commission's operating standard. For this reason, the Commission directed Southampton to ''show cause why it should not be required to file appropriate rate schedules with the Commission reflecting sales for resale'' to its utility-purchaser. 68 FERC at 61,113 n.9.

Request for Rehearing and Responses

On rehearing, Southampton argues that the Commission should have granted waiver for calendar year 1992.[1]

[1] Also on August 9, 1994, when it filed its rehearing request, Southampton filed a motion to treat its request for rehearing as if it had been filed on time, *i.e.*, on August 8, 1994. Southampton

Continued

In support, Southampton states that the Commission may have misunderstood the circumstances of its failure to satisfy the Commission's operating standard for QF status. Southampton explains that its non-compliance was due not to the actions of any of its own employees, but rather those of an entirely separate corporate entity, UC Operating Services. Southampton states that the third-party operator of its facility during the time in question was an experienced operator of generating facilities. For this reason, Southampton argues that it was entitled to rely on UC Operating Services to operate the QF in compliance with the Commission's technical requirements.

Southampton argues that in the past the Commission has granted waiver of its technical QF requirements *except* where there has been a willful or knowing violation of the Commission's QF standards. Southampton argues that here there was no such willful or knowing violation. Southampton also points out that both the Commission and Virginia Power would have remained unaware of the failure to comply with the operating standard absent Southampton's application for waiver; Southampton argues that this fact should have been considered in its favor.

In the alternative, Southampton asks the Commission to grant it a conditional waiver. Specifically, Southampton asks that it be allowed to refund to Virginia Power the difference between the avoided cost rates it charged during the period of non-compliance and the cost-based rates which otherwise would have been permitted under the FPA. Southampton argues that such a refund represents an appropriate remedy for its non-compliance and that there is no compelling reason to compound its ''punishment'' by also withholding the regulatory exemptions—from most sections of the FPA, from the Public Utility Holding Company Act (PUHCA) and from certain state laws and regulations (pertaining to electric utility rates and financial and organizational regulation)—otherwise available to QFs under the Commission's regulations, *see* 18 CFR §§ 292.601, 292.602 (1995). Southampton expresses particular concern with the possible loss of its PUHCA exemption, explaining that such a loss may undermine the ability of affiliates of its owners to remain in compliance with the QF ownership requirements, *see* 18 CFR § 292.206 (1995).

On August 24, 1994, Virginia Power filed a response to Southampton's request for rehearing, as well as a motion for leave to respond to the request for rehearing. Virginia Power argues, among other things, that the Commission did not apply a new policy in denying Southampton's request for waiver. Virginia Power also argues that the requested ''conditional'' waiver is based on speculative claims as to the dire consequences of an outright denial of waiver, and should not be granted to the economic detriment of Virginia Power's ratepayers.

On September 8, 1994, Westmoreland Coal Company, Westmoreland Energy, Inc. and Westmoreland-Franklin, Inc. (together, the Westmoreland Companies) filed a pleading in support of Southampton's request for rehearing or conditional waiver. The three Westmoreland entities state that they have an indirect partnership interest in Southampton and, accordingly, could be subjected to a host of federal and state regulations and liabilities for a past period of non-compliance if waiver is denied.

On October 18, 1994 and on October 24, 1994, respectively, the Electric Generation Association (EGA) and the National Independent Energy Producers (NIEP) filed letters in this proceeding in support of the alternative request for conditional waiver.

On November 7, 1994, the California Public Utilities Commission (California Commission) filed a letter in response to the letters of EGA and NIEP. The California Commission argues, among other things, that the only remedy for QF non-compliance that would fairly protect ratepayers is to require the non-complying QF to refund with interest the difference between the avoided cost rate paid by the utility to the non-complying QF and the market rate that the utility would have paid for the energy had it not been required to purchase power from the QF during the period of the QF's non-compliance. The California Commission states that a cost-based rate for the period of non-compliance that exceeds what the utility would have paid had it been able to respond to competitive market opportunities would not be reasonable to utility ratepayers.

Finally, on December 21, 1995, Southampton filed a motion for settlement conference. Southampton states that it believes that the arguments set forth in its request for rehearing are compelling. It nevertheless suggests that the convening of a settlement conference, at which it is prepared to present a proposal ''which it believes would accommodate the interests of all concerned, including Virginia Power, its ratepayers and the public'' (Motion at 4), would speed Commission resolution of this case.

Discussion

Under the circumstances presented herein, we will accept Southampton's request for rehearing as if it had been timely filed on August 8, 1994. In addition, we will consider all supplemental pleadings and letters filed in this proceeding (which we have added to the public record in these proceedings), in order to complete the arguments of the parties and to assist in our resolution of the issues presented.

Southampton's Request for Rehearing

As an initial matter, we will deny Southampton's request for rehearing to the extent we decline to upset our prior decision to deny its request for waiver for calendar year 1992. Southampton has not presented any arguments on rehearing that suggest to our satisfaction that our balancing of relevant factors improperly tilted in favor of a denial of waiver.

We are not persuaded by Southampton's argument on rehearing that the waiver decision should be motivated by whether the operators of its facility were its own employees or those employed by ''an experienced'' third-party contractor. In either event, the QF owner cannot abdicate its ongoing obligation to ensure compliance with the Commission's QF requirements. This is especially true where, as here, the QF owner already has received a Commission waiver to excuse non-compliance during a previous period of non-compliance (here, calendar year 1991). In light of Southampton's representation to the Commission, in support of waiver for calendar year 1991, that it expected to be back in compliance for calendar year 1992 and later periods, we believe that Southampton had a responsibility—which it failed to exercise—to be especially vigilant in ensuring QF compliance. In these circumstances, we believe it is no excuse for Southampton to claim that its non-compliance was neither willing nor knowing; it should have taken appropriate steps in these circumstances to understand the operation of its facility at all relevant times to ensure compliance.

We will, however, grant rehearing to the extent that we will grant Southampton's request that it retain most of the exemptions from federal and state regulation otherwise available to

explains that, due to ''photocopying equipment malfunctions,'' its courier did not arrive at the Commission to file its rehearing until 5:02 p.m. on August 8, 1994, after the close of business. On August 23, 1994, Virginia Electric & Power Company (Virginia Power), the utility-purchaser of Southampton-generated power, filed an answer in opposition to Southampton's motion.

QFs under the Commission's regulations. The one exemption we will deny is the obligation that Southampton file for Commission review, under section 205 of the FPA, the rates it charged Virginia Power during calendar year 1992 for wholesale power sales in interstate commerce.

We base this latter decision on a general policy we now announce to guide our resolution of all pending and future cases of QF non-compliance. We believe it is important at this time to explain the consequences of a denial of QF status. We take this action at this juncture to encourage QFs to be as vigilant as possible in promptly detecting possible non-compliance and in alerting the Commission as to possible non-compliance. Our concern is that if we do not articulate a clear policy as to the consequences of unexcused non-compliance, QFs will not exercise such vigilance.

Below, we explain this general policy. We then apply it to the circumstances of this particular case.

General Policy With Respect to Non-Compliance With the Commission's QF Regulations

Rate Review

As to the rates for power sales during a period of non-compliance with the Commission's QF requirements, we believe it is appropriate to distinguish between the following circumstances: (1) where the parties contemplated in the power sales agreement that QF status would be maintained during the entire term of the agreement; and (2) where the parties contemplated in the power sales agreement that QF compliance might not be maintained during the entire term of the agreement, *e.g.,* by negotiating an alternative non-compliance rate. In the former (more common) circumstance, we believe that the just and reasonable rate for such sales should be no higher than the price the buyer would have paid for energy had it not been required to purchase from the QF under our mandatory purchase requirements and instead had made an economic decision to purchase power from the QF in the hour. This places the buyer in the same position it would have faced had it known that it was not required to purchase the QF's power. Accordingly, with one exception, we will use the utility buyer's economy energy (incremental) cost during the period of non-compliance.[2] The one exception will be where the QF contract rate was less than the utility buyer's economy energy cost.[3]

As the Commission explained in *Medina Power Company,* 72 FERC ¶ 61,224 at 62,038–39 (1995), there is no reason to presume that the utility-purchaser would have agreed to purchase QF power at an avoided cost rate if, freed of the perceived obligation to purchase QF-generated power under PURPA, it could have purchased equivalent amounts of power from alternative sources at lower prices. An economy energy rate, in our judgment, places the utility-purchaser (and its ratepayers) in no worse a position than if it had known at the time of purchase that its ''QF'' supplier would be adjudged to be out of compliance with the Commission's QF requirements. Similarly, such a rate places the ''QF'' in the same position as if it had known at the relevant time that it would not be eligible for QF status during a particular period of non-compliance and would not be entitled to compel a purchase at the purchasing utility's avoided cost.

We agree with the California Commission that a fully allocated cost-based rate is not appropriate during the period of non-compliance when the parties were operating under the assumption that the seller would remain a QF during the entire term of their power purchase agreement (and thus did not contractually provide for an alternative non-compliance rate).

Further, a QF should not be able to charge a fully allocated cost-based rate if it represented to the Commission and to the utility-purchaser that it would operate in accord with the Commission's QF requirements. Such an opportunity, if successful, would act only to undermine compliance with the Commission's QF requirements. While the Commission is subject to the PURPA directive to ''encourage'' cogeneration and small power production, 16 U.S.C. 824a–3(a), it also is obligated to ensure that the rate charged by the QF ''shall be just and reasonable to the electric consumers of the electric utility and in the public interest'' and does not ''exceed[] the incremental cost to the electric utility of alternative electric energy.''[4] 16 U.S.C. 824a–3(b) (1994).

Finally, an economy energy rate is a market-driven (as opposed to fully allocated cost-based) rate that is more likely to reflect market conditions at the time of non-compliance than would the ''old'' avoided cost rate. Accordingly, an economy energy rate will better protect electric utility purchasers from uneconomic mandatory purchases from non-complying QFs.

We recognize that a substitute rate based on the purchasing utility's economy energy costs may not be appropriate in situations in which the parties in their contract have contemplated the possibility of non-compliance with the Commission's QF regulations. We are aware of QF power purchase contracts that do not require the seller to remain a QF throughout the term of the power purchase agreement and contemplate continued power sales during periods of non-compliance at a negotiated default rate. *See Medina Power Company (Medina),* 71 FERC ¶ 61,264, *reh'g denied,* 72 FERC ¶ 61,224 (1995) (instituting a hearing to determine the reasonableness of the seller's rates on a cost basis, where the seller never has complied with the Commission's QF regulations).

We believe that it is appropriate to continue to consider cases like the *Medina* case, in which the parties contractually provided for continuing service during periods of QF non-compliance at a different rate, on a case-by-case basis.[5]

Regulatory Exemptions

Turning to the continuing availability of the regulatory exemptions, *see* 18 C.F.R. §§ 292.601, 292.602 (1995), we agree with Southampton that, as a general matter, there is no compelling reason to eliminate all of the exemptions from federal and state

[2] We believe that in the majority of cases any attempt to replicate actual market conditions during past periods would be a difficult and time consuming procedure. Moreover, data about the actual economic decisions of the buyer can be found in its dispatch logs. Except for its must run generating units and mandatory purchases including QF purchases, a utility will evaluate its economic options in each hour (energy purchases and generating unit running costs) and select a combination of resources sufficient to meet its load at the lowest overall cost. To set a rate for sales made during a period of non-compliance, we will adopt the highest cost option actually selected by the buyer in the hour, *e.g.,* the most expensive energy purchase or unit running cost. This is because the highest cost option represents the utility's incremental cost in that hour. Such costs represent a reasonable proxy for the market rate the buyer would have paid during the period of non-compliance. To the extent an investigation is necessary, it would be limited to determining the purchaser's actual energy costs during the period of non-compliance.

[3] To the extent the contract rate was less than the economy energy costs over all the hours of the period of noncompliance, the just and reasonable rate will be the contract rate. Any other result would penalize ratepayers due to the facility's non-compliance with QF requirements. Such a perverse result would not comply with the requirements of section 210(b) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 824a–3(b) (1994).

[4] As noted, the utility-purchaser's economy energy costs during the period of non-compliance are, in effect, a measure of the utility's ''incremental costs.''

[5] In such cases, the ''QF'' should file its proposed rate, with appropriate support, with the Commission.

regulation otherwise applicable to QFs, assuming the non-compliance was not marked by long duration or frequent recurrence. We believe that the prospect of a lower, substitute economy energy rate during a period of non-compliance (in conjunction with whatever contractual remedies are appropriate for non-compliance), or the possibility of case-specific scrutiny to determine a just and reasonable rate where the parties' contract provides for a non-compliance default rate, should provide ample incentive for QFs to retain their QF status. Similarly, these rate remedies also should provide ample incentive for QFs, to the extent uncertain as to their continuing compliance, to take the initiative to seek Commission guidance as soon as possible.

This approach is entirely consistent with the explicit language of PURPA which provides in section 210 that the Commission has the authority to grant such exemptions ''in whole or part.'' 16 U.S.C. § 824a–3(e) (1994). The same section provides that the Commission may grant exemptions from ''any combination of'' FPA, PUHCA and state regulation ''*if* the Commission determines such exemption is necessary to encourage cogeneration and small power production.'' *Id.* (emphasis added).

Accordingly, in all cases in which a QF failed to comply with our QF regulations during some past period of time, fails to receive a waiver to excuse such non-compliance, and is now back in compliance, we will continue to grant all of the exemptions otherwise applicable to QFs except for the FPA section 205 exemption.[6] As explained above, such QFs must commit to FPA section 205 rate regulation for the period of non-compliance.

For pending cases as well as future cases, we will grant all of the regulatory exemptions (other than FPA rate review) unless the non-compliance is marked by long duration or frequent recurrence. In circumstances where the QF has engaged in more than one period of non-compliance, the QF will assume a heavy burden in demonstrating that the non-compliance merits a second waiver.

Determination of Southampton's Rates

Applying this policy to Southampton's circumstances, we will grant its request for continued exemption during calendar year 1992 from regulation under PUHCA and state utility laws and most sections of the FPA, consistent with 18 C.F.R. §§ 292.601, 292.602 (1995). However, as explained above, the extension of QF regulatory exemptions is subject to Southampton's obligation to submit for Commission rate review, under section 205 of the FPA, the rates it charged to Virginia Power during calendar year 1992. It also must refund to Virginia Power the difference between the contract rate during that year and the Commission-approved rate, with interest calculated pursuant to the Commission's regulations, *see* 18 C.F.R. § 35.19a (1995).

We have decided above that the just and reasonable rate for wholesale power service provided during each hour of the period of non-compliance (1992) should be no higher than what Virginia Power would have paid for energy had it made an economic decision to purchase power from Southampton in these hours.[7] For this reason, we direct Virginia Power to compile data from its dispatch logs showing the highest cost option actually selected by Virginia Power in the hour, *e.g.*, the most expensive energy purchase or unit running cost[8] for each hour during 1992 and to submit a report of such costs to us within 45 days of the date of this order. To avoid questions about the source of such cost data, we direct personnel from both Southampton and Virginia Power to compile the data jointly from Virginia Power's system dispatch logs. We strongly encourage the parties to reach agreement as to this remaining rate issue. After we receive the required report, we will determine whether further proceedings are necessary.

In light of these procedures, we see no need to undertake additional ''settlement judge'' procedures as recommended by Southampton.

The Commission Orders

(A) Southampton's request for rehearing is hereby accepted as if it were timely filed.

(B) Southampton's request for rehearing is hereby granted in part and denied in part, as discussed in the body of this order.

(C) Virginia Power is hereby directed to file with the Commission, within 45 days of the date of this order, a report compiling its hourly economy energy costs for 1992, as discussed in the body of this order.

(D) The Secretary is hereby directed to publish a copy of this order in the Federal Register.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20051 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–P

[6] We will issue orders in the near future that apply this policy to pending cases raising the non-compliance issues. Of course, we retain the discretion to resolve any individual cases on any peculiar facts presented, such as those resolved through negotiated settlement.

[7] *See supra* at 6 & n. 2.

[8] The highest cost in the hour is the incremental cost for that hour.

[Docket No. RP96–318–000]

Midwestern Gas Transmission Company; Notice of Cashout Report

August 1, 1996.

Take notice that on July 29, 1996, Midwestern Gas Transmission Company (Midwestern) tendered for filing its cashout report for the September 1994 through August 1995 period.

Midwestern states that the cashout report reflects a total cashout loss during this period of $22,755.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 8, 1996. 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, Jr.,

Acting Secretary.

[FR Doc. 96–20046 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP–96–683–000]

Mississippi River Transmission Corporation; Notice of Application To Abandon

August 2, 1996.

Take notice that on July 30, 1996, Mississippi River Transmission Corporation (Applicant), 1600 Smith Street, Houston Texas 77002, filed pursuant to Section 7(b) of the Natural Gas Act, for authority to abandon, a certificated transportation service with El Paso Natural Gas Company. The service is Applicant's Rate Schedule X–23 in its FERC Gas Tariff, Original Volume No. 2. Applicant's proposal is

more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the transportation service is no longer needed and it has canceled the agreement.

Any person desiring to be heard or make any protest with reference to said application should on or before August 23, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–20093 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–661–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

August 1, 1996.

Take notice that on July 24, 1996, National Fuel Gas Supply Corporation (National Supply), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP96–661–000, a request pursuant to § 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new sales tap in the Town of Lancaster, Erie County, New York. The subject tap is proposed to render service to an existing firm transportation customer of National Supply, National Fuel Gas Distribution Corporation (Distribution). National Supply makes such request, under its blanket certificate issued in Docket No. CP83–4–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

National Supply states that it intends to deliver up to 2,628,000 Mcf annually to Distribution at the new sales tap, under National Supply's EFT Rate Schedule.

National Supply states that the volumes to be delivered at the proposed tap will be within the certificated entitlement of Distribution, and that the proposed service will have a minimal impact on National Supply's peak day and annual deliveries. It is stated that Distribution will reimburse the estimated $90,000 construction cost.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–20049 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–319–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 2, 1996

Take notice that on July 30, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Ninth Revised Sheet No. 237A and Tenth Revised Sheet No. 237B, with a proposed effective date of August 30, 1996.

National proposes to flow through to its former RQ and CD customers refunds, including interest, received from certain of National's upstream pipeline-suppliers related to National's Account Nos. 191 and 186.

National states that in accordance with Sections 21 (c) and (d) of the General Terms and Conditions of National's FERC Gas Tariff, National is allocating the $169.33 in commodity credit and $3,060.20 in demand credit according to the RQ and CD customer's commodity sales based on the 12 months ending July 31, 1993, and their level of demand determinants on July 31, 1993, the day before National implemented restructured services on its system.

National states that copies of this filing were served upon the company's jurisdictional customers and upon the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–20097 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–659–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

August 1, 1996.

Take notice that on July 24, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in

Docket No. CP96–659–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to upgrade an existing delivery point, located in Cass County, Nebraska, to accommodate increased natural gas deliveries to UtiliCorp United, Inc. (UCU), under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern intends to upgrade the Weeping Water #1 TBS located in Cass County, Nebraska. Northern states that UCU has requested increased service at the Weeping Water #1 TBS to accommodate growth in the area. Northern also states that the proposed increase in volumes to be delivered to UCU at the Weeping Water #1 TBS are 1,391 MMBtu on a peak day and 152, 314 MMBtu on an annual basis. Northern estimates a $40,000 cost for upgrading the existing delivery point.

Northern advises that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Northern states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 96–20050 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–87–000]

Pacific Gas Transmission Company; Notice of Refund Report

August 1, 1996.

Take notice that on July 29, 1996, Pacific Gas Transmission Company (PGT) tendered for filing a report pursuant to Ordering Paragraph (C) of the Commission's February 22, 1996 order in Gas Research Institute (GRI), Docket No. RP95–124–000.

PGT states that the report documents PGT's refund to its customers of $1,647,826.

PGT states that the refund is allocated to each eligible firm customers based on each customer's pro rata contributions to PGT's GRI surcharge collections on non-discounted firm transportation during 1995, and has been reflected as credits on customers invoices issued July 15 1996.

PGT states that copies of the refund report has been served upon PGT's jurisdictional customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 8, 1996. 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 Transco's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–20043 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–662-000]

Questar Pipeline Company; Notice of Request Under Blanket Authorization

August 1, 1996.

Take notice that on July 24, 1996, Questar Pipeline Company (Questar), 79 South State Street, P.O. Box 11450, Salt Lake City, Utah 84147, filed in Docket No. CP96–662–000 a request pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216(b)) for authorization to abandon, by removal, the Pace, Shute Creek, and Isom District Regulator Stations (DRS) and appurtenant facilities located in Summit County, Utah, and Lincoln and Uinta Counties, Wyoming, under the blanket certificate issued in Docket No. CP82–491–000, pursuant to Section 7(b) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Questar states that Mountain Fuel Supply Company (Mountain Fuel), the only customer served through these facilities, supports the abandonment of the subject facilities. Mountain Fuel has installed a low-pressure distribution line adjacent to the Pace and Isom DRSs to service existing residential customers as well as small commercial customers. Questar states that these facilities are no longer necessary because Mountain Fuel has bypassed the DRS facilities and is providing service to these areas through other portions of Mountain Fuel's existing distribution system. In reference to its Shute Creek DRS, Questar states that Mountain Fuel has asserted that it is removing its delivery point facilities at the Shute Creek DRS and will no longer provide natural gas service to the end-user at this location. Questar asserts that the end-user, Exxon Company, U.S.A., has made other supply arrangements for its plant-fuel requirements. Questar notes that Mountain Fuel has not utilized the Shute Creek facilities since 1991. Questar states that the total gross investment associated with the facilities proposed to be abandoned is $66,870. Questar asserts that it will notify the public service commissions of Utah and Wyoming of the request under blanket authorization.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–20038 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–21–000]

Sabine Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

August 2, 1996.

Take notice that on July 29, 1996, Sabine Pipe Line Company (Sabine) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet proposed to be effective September 1, 1996:

Third Revised Sheet No. 289

Sabine states that the revised tariff sheet reflects a change in operating personnel shared by Sabine and its affiliated marketing company.

Sabine states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–20095 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–73–000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

August 1, 1996.

Take notice that on July 12, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a report of Gas Research Institute (GRI) refunds received by Transco for the year ended December 31, 1995. Transco states that it refunded $3,617,244.00 to eligible shippers based on non-discounted GRI demand paid during the year ended December 31, 1995.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 8, 1996. 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 Transco's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–20040 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–75–000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

August 1, 1996.

Take notice that on July 16, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a refunds report summarizing refunds received from National Fuel-Penn York Division for the period June 1, 1995 through March 31, 1996. Transco states that it refunded $170,852.68 due its eligible LSS and SS–2 customers based on refunds paid during the period June 1, 1995 through March 31, 1996.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 8, 1996. 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 Transco's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–20041 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. IS96–17–000]

Williams Pipe Line Company; Notice on Technical Conference

August 2, 1996.

On July 5, 1996, the Commission issued an order [1] in the captioned docket requiring, among other things, a technical conference on William Pipe Line Company's (Williams) proposed tariffs and tariff supplements. On July 25, 1996, Williams filed a notice pursuant to 18 CFR 341.13(b) withdrawing the proposed tariffs and tariff supplements at issue in this proceeding. Therefore, any technical conference is deferred pending review of Williams' most recent filing.

Any questions concerning this notice should be directed to John M. Robinson, (202) 208–0808, or Leon Smith, (202) 208–0505.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–20094 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2000–010]

Power Authority of the State of New York; Notice of Revised Cooperative Consultation Process Team Meetings Associated With Relicensing the St. Lawrence-FDR Power Project

August 2, 1996.

The establishment of the Cooperative Consultation Process (CCP) Team and the Scoping Process for the relicensing of the St. Lawrence-FDR Power Project were identified in the NOTICE OF MEMORANDUM OF UNDERSTANDING, FORMATION OF COOPERATIVE CONSULTATION PROCESS TEAM, AND INITIATION OF SCOPING PROCESS ASSOCIATED WITH RELICENSING THE ST. LAWRENCE-FDR POWER PROJECT issued May 2, 1996, and found in the Federal Register dated May 8, 1996, Volume 61, No. 90, on page 20813. The Scoping Process will assist the Federal Energy Regulatory Commission and the New York Department of Environmental Conservation in satisfying the agencies' requirements under the National Environmental Policy Act of 1969 and

[1] Williams Pipe Line Company, 76 FERC ¶ 61,023 (1996).

Section 401(a)(1) of the Clean Water Act.

The following is a list of the future CCP Team meetings that are presently scheduled for the preparation of Draft Scoping Document 1.

August 14–15, 1996

1. The CCP Team will meet to discuss Ecological Resource issues from the consolidated list of the 45 resource issues identified for inclusion in Scoping Document 1. The meetings will be held at General Motors facilities in Massena, New York.

September 9, 10, & 11, 1996

2. The CCP Team will meet to discuss the Recreational and Land Use Issues from the consolidated list of the 45 resource issues identified for inclusion in the scoping document. The meetings will be held at Akwesasne, New York.

October 23–24, 1996

3. The CCP Team will meet to finalize the Draft Scoping Document 1. The meeting will be held at Power Authority of the State of New York's Robert Moses Powerhouse in Massena, New York.

November 19–20, 1996

4. CCP meeting held at Power Authority of the State of New York's Robert Moses Powerhouse in Massena, New York.

December 17–18, 1996

5. CCP meeting held at Power Authority of the State of New York's Robert Moses Powerhouse in Massena, New York.

If you would like to participate in the meeting or need general information on the CCP Team and process, as well as the relicensing process contact any one of the following three individuals:

Mr. Thomas R. Tatham, New York Power Authority, 212–468–6747, 212–468–6272 (fax), EMAIL: Ytathat@IP3GATE.USA.COM

Mr. Keith Silliman, New York Dept. of Environmental Conservation, 518–457–0986, 518–457–3978 (fax), EMAIL: Silliman@ALBANY.NET.

Mr. Thomas Russo, Federal Energy Regulatory Commission, 202–219–2791, 202–219–0125 (fax), EMAIL: Thomas.Russo@FERC.FED.US

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–20096 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Final Power Allocation Procedures of the Post-2000 Resource Pool—Pick-Sloan Missouri Basin Program, Eastern Division

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final procedures.

SUMMARY: Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy, hereby announces its Post 2000 Resource Pool Allocation Procedures to fulfill the requirements of Subpart C—Power Marketing Initiative of the Energy Planning and Management Program Final Rule, 10 CFR 905, published at 60 FR 54151. The Post 2000 Resource Pool Allocation Procedures are Western's implementation of Subpart C—Power Marketing Initiative of the Energy Planning and Management Program Final Rule. Western's proposed procedures were published in the Federal Register at 61 FR 2817, January 29, 1996 and revised and clarified in the Federal Register at 61 FR 28574, June 5, 1996. Responses to public comments received pertaining to the proposed procedures are included in this notice.

DATES: The Post 2000 Resource Pool Allocation Procedures will become effective 30 days from the date of publication of this notice, and will remain in effect until December 31, 2020.

ADDRESSES: Information regarding the Post 2000 Resource Pool Allocation Procedures, including comments, letters, and other supporting documents made or kept by Western for the purpose of developing the final procedures, are available for public inspection and copying at the Upper Great Plains Customer Service Region, Western Area Power Administration, located at 2900 4th Avenue North, P.O. Box 35800, Billings, MT 59107–5800.

SUPPLEMENTARY INFORMATION: Western published a notice of proposed procedures on January 29, 1996, to implement Subpart C—Power Marketing Initiative of the Energy Planning and Management Program Final Rule, 10 CFR 905, published at 60 FR 54151 in the Federal Register. The Energy Planning and Management Program (Program), which was developed in part to implement section 114 of the Energy Policy Act of 1992, became effective on November 20, 1995. Subpart C of the Program provides for the establishment of project-specific resource pools and the allocation of power from these pools to new preference customers. Those proposed procedures, in conjunction with the Eastern Division, Pick-Sloan Missouri Basin Program Final Post-1985 Marketing Plan (Post-1985 Marketing Plan) (45 FR 71860) will establish the framework for allocating power from the resource pool to be established for the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP–ED).

Western held public information and comment forums on the proposed procedures on February 14, 15, and 16, 1996, to accept oral and written comments on the proposed procedures and call for applications. The initial formal comment period ended March 4, 1996. On March 8, 1996, Western published a notice to extend the time that written comments and applicant profile data could be submitted until April 8, 1996. On June 5, 1996, in the Federal Register at 61 FR 28574, Western published a 30-day notice to respond to comments regarding Section III, General Allocation Criteria, Paragraph E, to clarify the Post 2000 Resource Pool Allocation Procedures in order to fulfill the intent of the Program and called for additional applications.

The Post 2000 Resource Pool Allocation Procedures set forth in this Federal Register notice will explain in detail how Western intends to implement Subpart C of the Power Marketing Initiative of the Energy Planning and Management Program Final Rule in the P–SMBP–ED.

Response to Customer Comments Regarding Post 2000 Resource Pool Allocation Procedures

I. Amount of Pool Resources

Western proposed to allocate 4 percent of the P–SMBP–ED long-term firm hydroelectric resource available as of January 1, 2001, as firm power as provided for by the Program.

Comment: We received several comments from Native American tribes expressing great disappointment in the size (4 percent) of the resource pool. It is their belief that the pool is not large enough to serve 100 percent of their current and future electrical needs. One comment suggested that the amount of power available in the resource pool will not be sufficient to meet Native American demand on January 1, 2001.

Response: The 4 percent resource pool was derived from the Program, and therefore the size of the pool is outside this process. Two future 1 percent resource pools were also identified as part of the Program and allocations from these future resource pools will be dealt with in future public processes.

II. General Eligibility Criteria

Western proposes to apply general eligibility criteria to applicants seeking an allocation of firm power under the proposed Post-2000 Resource Pool Allocation Procedures.

Comment: Western received several comments suggesting that if a Native American tribe establishes a utility and applies for an allocation from Western, they should be considered under utility applicant status, not as a Native American tribe applicant.

Response: If a Native American tribe makes application under this process as a utility applicant, Western would consider the application under utility applicant criteria.

Comment: Western received comments regarding the date for setting up utility status. One comment suggested that section II.E. should be written as follows: ''qualified utility and Native American applicants must have achieved operating utility status by December 31, 1995.'' Other comments suggested the deadline for achieving utility status be extended to June 1, 1997 or possibly later.

Response: The date for achieving utility status was determined by the Program. To be eligible to apply for power available from the resource pool, those entities that desire to purchase Western power for resale to consumers, must have attained utility status by December 31, 1996. Section 905.35, Paragraph (c) of Subpart C, Power Marketing Initiative, of 60 FR 54151 states that: All potential new customers, except Native American tribes, must be ready, willing, and able to receive and distribute or use power from Western. Ready, willing, and able means that (1) the potential customer has the facilities needed for the receipt of power or has made the necessary arrangements for transmission and/or distribution service, (2) the potential customer's power supply contract with third parties permit the delivery of Western's power, and (3) metering, scheduling, and billing arrangements are in place.

Comment: Several comments expressed support for the use of the Indian Self-Determination Act (Act) to determine eligibility of Native American tribe applicants.

Response: The allocation procedures use the Act to determine whether or not an applicant is a qualified Native American applicant. Use of the Act to make these decisions was first used in the Program final rule. Because these allocation procedures will be used in allocating the resource pool created by those regulations, Western used the same definition in this process.

III. General Allocation Criteria

Western proposes to apply general allocation criteria to applicants seeking an allocation of firm power under the proposed Post 2000 Resource Pool Allocation Procedures.

Comment: One comment suggested that the 5,000 kW limitation on new allocations should apply to all applicants, one comment suggested that the limitation should not apply to Native American tribes and another comment suggested the maximum amount be increased to 6,000 kW.

Response: The Post 1985 Marketing Criteria established the 5,000 kW limitation referenced in the allocation criteria. This limitation does not apply to Native American tribe applicants. The 5,000 kW limit was placed in the Post 1985 Marketing Plan to ensure that the sale of P–SMBP–ED power would benefit a wide class of users which is consistent with Federal Reclamation Law.

Comment: A comment was made that Native American tribes should have priority status in any allocations that are being made.

Response: The preference clause only provides that public entities be given preference over private entities in the marketing of power from Federal reclamation projects. There are no preference entities which have greater privileges than another. Western has always considered Native American tribes to be preference customers, and in response to comments received during the Program public process, Western has changed its policy of requiring that Native American tribes achieve utility status prior to receiving an allocation.

Comment: Western received many comments on how Native American loads should be determined. Many stated that Western should develop a standard method for determining Native American loads and apply that method to all Native American tribe applicants. Others advocated using actual tribal loads on the reservation.

Response: A variety of methods of load estimation were submitted by Native American tribes. Western accepted load estimates developed by the Native American tribes. Inconsistent estimates will be adjusted by Western. The proposed allocations developed from these load estimates will be published in a subsequent Federal Register notice.

Comment: Western received comments on the issue of off-reservation use of Native American tribe allocations. The majority of the comments supported use of allocations by qualified Native American tribe applicants on the reservation only. Others supported off-reservation use under certain circumstances. In particular, several comments advocated off-reservation use for the Turtle Mountain Tribe.

Response: Off-reservation use of Native American tribe allocations under certain circumstances as determined by Western was allowed for in 60 FR 54151. The circumstances under which off-reservation use of a Native American tribe allocation will be allowed will be determined by Western on a case-by-case basis after final allocations are made.

Comment: Western received comments that Native American tribes are already receiving benefits of Federal hydropower through the cooperatives that serve them and these benefits need to be considered when Western makes allocations to Native American tribes so they do not receive more than 100 percent of their current electrical requirements.

Response: Western understands that some Native American tribes are already receiving the benefits of Federal hydropower through the cooperatives that serve them. However, the methodology for determining Native American tribal allocations will be set forth in a subsequent future Federal Register notice. Therefore, this comment will be addressed in that notice.

Comment: Western received many comments on the proposal to adjust utility and nonutility applicants' loads using Mid-Continent Area Power Pool data trends. Some comments stated that actual 1979–80 data should be used. Others stated that unadjusted 1994–95 data should be used. One comment suggested basing allocations on load data from November 1994 through October 1995.

Response: As revised and clarified in the Federal Register at 61 FR 28574, June 5, 1996, Western will use actual unadjusted load data from May 1994 through April 1995 to determine utility applicants' allocations. Western agrees with the numerous comments that using Mid-Continent Area Power Pool data trends to adjust utility applicants' loads would unfairly penalize those applicants who had little or no load growth between 1979 and 1995.

Comment: Western received a comment to consider a reallocation based on a percentage to all customers should there be over 5 MW of firm power not under contract subsequent to the closing date for executing firm power contracts.

Response: As stated in the Final Post 2000 Resource Pool Allocation

Procedures section III.H below, Western, at its discretion, reserves the right to determine usage of firm power not under contract.

Comment: Western received comments that support Western's proposal to dissolve the resource pool as long as it is not rate impacting.

Response: Western is in agreement with this comment and will consider the best available options should this power not allocated in these procedures be available.

Comment: Western received comment that the entire 4 percent resource pool should be allocated to qualified applicants.

Response: Western plans to make allocations from the 4 percent resource pool to qualified utility and nonutility applicants based upon Post-1985 Marketing Plan Criteria and to Native American tribe applicants based upon serving a fair share of their load. Based upon these criteria, the total allocations from the resource pool may be less than the resource pool.

Comment: It was suggested that a Native American tribe would have to demonstrate the existence of an agreement with a viable utility system for delivery of the allocation to the end user.

Response: Western has determined that placing an additional requirement on Native American tribes would be unduly burdensome and is not consistent with the intent of the Program at 60 FR 54151. If an agreement with a utility responsible for delivery is not attainable, Western has reserved the right to provide the economic benefits of its resources directly to Native American tribes.

Comment: Where is the funding going to come from for making credits to tribal members?

Response: Should this program require funding, Western will use net bill or bill credit methods. If these methods are not sufficient, additional appropriations from Congress may have to be made to provide economic benefit.

Comment: The formula for calculating the amount of credit must recognize the specific situation of the local utility, because their costs vary significantly from Western customer to Western customer.

Response: Western is in agreement with the comment. Should any crediting formula be required, Western will recognize the specific local utility situation as needed.

Comment: Western's customers have already given up a portion of their allocations; they cannot also be asked to fund additional payment to tribal members. It appears they may have increased rates on the remainder of their allocation.

Response: Western has no intent to increase P–SMBP–ED rates.

Comment: Western received comment that the suggested method of delivering the benefits of Federal hydropower to the Native American tribes would be a bill crediting arrangement.

Response: Western agrees that a bill crediting arrangement is a viable method of delivering the benefits of Federal hydropower to Native American tribes. However, flexibility must be retained in the delivery of such benefits in order to fit a diverse group of Native American tribes and power suppliers. The method for delivering the benefits of Federal hydropower to the tribes will be determined following the allocation process.

Comment: Western received comment that if Federal hydropower benefits are delivered to Native American tribes in the form of monetary payments, those payments should be contractually obligated to go toward energy use.

Response: Western views direct monetary payments in lieu of delivery of Western power and energy as a last resort to be used only if unanticipated obstacles to the delivery of Federal hydropower benefits arise. Should this situation arise, Western will consider contractual stipulations on how those monetary payments are to be used by Native American tribes. Such stipulations are beyond the scope of this public process.

Comment: Western received comment that if tribal members' bills are credited, the portion of the resource pool associated with these credits should be retained by all existing customers at cost-based rates.

Response: Western will not increase existing customers' allocations for the amount associated with any tribal energy credits. Energy crediting may not always be the means by which some Native American tribes receive the benefits of Federal hydropower. In the event that at a later time a Native American tribe changes the method by which they receive the benefits of Federal hydropower, Western will not allocate the energy associated with bill credits to existing customers.

IV. General Contract Principles

Western proposes to apply general contract principles to all applicants receiving an allocation of firm power under the proposed Post 2000 Resource Pool Allocation Procedures.

Comment: A comment was offered which suggested that contracts with utility applicants should explicitly require cooperation on the part of those utilities in the transmission of firm power to the Native American tribes as a condition of that sale.

Response: To date, Western has received cooperation from P–SMBP–ED cooperatives on the issue of delivery of hydropower benefits to Native American tribes. Even if unanticipated obstacles to the delivery of these benefits arise, Western has retained the right to provide the economic benefits of its resource directly to Native Americans. Because of the options available, Western sees no reason to address this issue contractually. Western has already executed the contract extensions for the P–SMBP–ED resource which will exist after the 4 percent resource pool is created. In addition, there may be utilities which Western does not contract with for a firm power allocation which would be responsible for transmission of Native American tribe allocation.

Comment: Receipt of a Federal power allocation by a Native American tribe must allow the current power supplier the ability to negotiate delivery charges which prevent the negative financial effect of creating the need to raise rates.

Response: Delivery arrangements are the responsibility of the new customers.

Comment: The proposed rule should include assisting the Native American tribes in obtaining a suitable third-party distribution system retail wheeling agreement.

Response: The P–SMBP–ED cooperatives have been supportive of the delivery of the benefits of power allocations to Native American tribes. Western shall assist the allottee in obtaining third-party transmission arrangements for delivery of firm power allocated under these proposed procedures to new customers; nonetheless, each allottee is ultimately responsible for obtaining its own delivery arrangements.

Comment: A comment suggested that it would be appropriate to include the utility ultimately responsible for delivery of the allocation to Native American tribes in the contract process, and that Western should be an advocate in favor of the tribes in that process.

Response: Western will assist the allottee in obtaining third-party transmission arrangements for delivery of firm power. To the extent that utilities are involved in these arrangements, Western will work with those entities. However, it is the ultimate responsibility of the allottee to obtain its own delivery arrangements.

Comment: All new customers, utility, nonutility, and Native American tribes alike, should have the same contractual provisions in their contracts as

Western's present customers. Specifically, all contracts should continue to have the provision preventing the sale of Federal power to customers other than retail customers.

Response: Western is in agreement with this comment. The contract with all new customers will contain Western's existing general contract principles.

Comment: If Western experiences additional costs under the proposed pool allocation, all program participants should participate in these costs, not just the existing Western utilities.

Response: Our interpretation of this comment was that all firm power customers of Western, inclusive of the new customers brought in with the allocation of the 4 percent resource pool, will all be impacted if there are additional costs to Western under the proposed pool allocations. Western agrees that all firm power customers, inclusive of the new customers, would be impacted through their rates if there is a cost change due to the allocation of the 4 percent resource pool.

Comment: We received several comments requesting that Native American tribes not be required to comply with the Integrated Resource Planning (IRP) requirements of the Program, unless the Native American tribe applies as a utility.

Response: Title II of the 1992 Energy Policy Act requires all Western customers to comply with the IRP criteria. This requirement was also brought forward and restated in the Program language. Therefore, IRP requirements are required of all customers including Native American tribes.

Responses to Comments Regarding Other Issues

Comment: We received a comment from a cooperative expressing their disappointment at the establishment of the 4 percent resource pool because it means a rate impact for members.

Response: Western understands the concern for customers who may be adversely impacted with the reduction of their Federal power allocations. However, this reduction was provided for in the Program and is beyond the scope of this public process.

Comment: We received a comment from a cooperative expressing disappointment that Native American tribes will be allocated power from the 4 percent resource pool, because it comes as an expense to Western customers in the region.

Response: Western understands the concern of customers who may be adversely impacted with the reduction of their Federal power allocations. However, this reduction was provided for in the Program and is beyond the scope of this public process.

Comment: We received a comment requesting Western's Upper Great Plains Customer Service Region to establish a ''Native American Desk'' (Desk) to handle Native American issues.

Response: We are a diverse agency with many different functions. It is our belief that issues with Native Americans are handled effectively and efficiently by dealing directly with the divisions involved in each issue. The establishment of a Desk is not part of this public process and will be considered if it would result in increased responsiveness to Western's Native American customers.

Comment: Federal facilities, such as the Bureau of Indian Affairs or other Federal agencies, should not be eligible to receive any new resources.

Response: Federal facilities are eligible for allocations of Federal power as the preference clause has been defined through Federal Reclamation Law.

Comment: One comment suggested that any allocation to a Native American tribe should be made jointly to both the tribe and the utility that will transfer the resource.

Response: The intent of the Program at 60 FR 54151 was to provide the benefits of Federal hydropower allocations directly to individual tribes. This principal is consistent with how Western treats existing customers. Western does not feel that the goal of the Program would be served by jointly allocating Native American allocations to utilities and tribes.

Comment: Several comments were received expressing a concern that the allocation procedures would somehow imply or require tribal jurisdiction over the entity which will supply the Native American load.

Response: The issue of tribal jurisdiction is beyond the scope of this public process. Western is not the proper authority to decide that issue, as it is outside of our mission. However, Western has not intended to expand the scope of tribal jurisdiction with these allocation procedures.

Comment: One comment expressed appreciation for Western's Federal American Indian policy.

Response: Western appreciates the positive response with respect to the attempts it has made to address Native American issues. Western supports the Department of Energy's American Indian policy which stresses the need for a government-to-government, trust-based relationship.

Comment: Western received several requests for extending the deadline for submittal of the Applicant Profile Data (APD).

Response: 61 FR 9449 published March 8, 1996, extended the deadline for submittal of APD and comments until April 8, 1996. Also, 61 FR 28574 published June 5, 1996, clarifying the terms of Post 2000 Resource Pool Allocation Procedures, reopened the deadline for submittal of APD until July 5, 1996.

Comment: Negotiations should begin as soon as possible.

Response: Western agrees with this comment. Western interprets this comment as to when will Western negotiate contracts with new customers for firm electric service. Western intends to begin negotiating new contracts as soon as possible.

Comment: One comment suggested that Greenfield, Iowa, should be eligible for a minimum allocation of 100 kW.

Response: Only that portion of the Greenfield load within the P-SMBP-ED marketing area is eligible for an allocation as part of this process. All criteria are applicable to that portion of Greenfield's load.

Comment: We received comments about all customers, including Native American tribes, being included in future withdrawals for the creation of resource pools.

Response: This was determined in Subpart C, Power Marketing Initiative, Paragraph 905.32 (d) of 60 FR 54151. The additional resource pool increments shall be established from the then existing customers.

Comment: Western received a comment that allocations from the 4 percent resource pool is not the only responsibility or obligation the Federal government has to Native American tribes.

Response: This comment is beyond the scope of this public process. The 4 percent resource pool was established by the Program. This process is designed to allocate the 4 percent as set forth by the Program.

Comment: Western received a comment that the qualifications for qualified applicants should be changed if necessary, such that the Bureau of Reclamation, as sponsor for the Mni Wiconi Project, meets the definition for qualified applicant.

Response: Western intends to determine the Bureau of Reclamation eligibility based on the Final Post 2000 Resource Pool Allocation Procedures outlined below.

Final Post 2000 Resource Pool Allocation Procedures

I. Amount of Pool Resources

Western will allocate up to 4 percent of the P-SMBP-ED long-term firm hydroelectric resource available as of January 1, 2001, as firm power (firm power) as provided for by the Program. Firm power means capacity and associated energy allocated by Western and subject to the terms and conditions specified in the Western electric service contract.

II. General Eligibility Criteria

Western will apply the following general eligibility criteria to applicants seeking an allocation of firm power under the Post 2000 Resource Pool Allocation Procedures.

A. All qualified applicants must be preference entities in accordance with section 9c of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), as amended and supplemented.

B. All qualified applicants must be located within the currently established P–SMBP–ED marketing area.

C. All qualified applicants must not be currently receiving benefits, directly or indirectly, from a current P–SMBP–ED firm power allocation. Qualified Native American applicants are not subject to this requirement.

D. Qualified utility and nonutility applicants must be able to use the firm power directly or be able to sell it directly to retail customers.

E. Qualified utility applicants that desire to purchase power from Western for resale to consumers, including municipalities, cooperatives, public utility districts, and public power districts must have utility status by December 31, 1996. Utility status means the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase Federal power from Western on a wholesale basis.

F. Qualified Native American applicants must be a Native American tribe as defined in the Indian Self Determination Act of 1975, 25 U.S.C. § 450b, as amended.

III. General Allocation Criteria

Western will apply the following general allocation criteria to applicants seeking an allocation of firm power under the Post 2000 Resource Pool Allocation Procedures.

A. Allocations of firm power will be made in amounts as determined solely by Western in exercise of its discretion under the Federal Reclamation Law.

B. An allottee will have the right to purchase such firm power only upon the execution of an electric service contract between Western and the allottee, and satisfaction of all conditions in that contract.

C. Firm power allocated under these procedures will be available only to new preference customers in the existing P–SMBP–ED marketing area. This marketing area includes Montana (east of the Continental Divide), North Dakota, South Dakota, and specific areas in western Iowa, western Minnesota and eastern Nebraska. The marketing area of the P–SMBP–ED is Montana east of the Continental Divide, all of North and South Dakota, Nebraska east of the 101° meridian, Iowa west of the 94½° meridian, and Minnesota west of a line on the 94½° meridian from the southern boundary of the state to the 46° parallel and thence northwesterly to the northern boundary of the state at the 96½° meridian.

D. Allocations made to Native American tribes will be based on estimated load developed by the Native American tribes. Inconsistent estimates will be adjusted by Western during the allocation process.

E. Allocations made to qualified utility and nonutility applicants will be based on the loads experienced in the 1994 summer season and the 1994–95 winter season. Western will apply the Post-1985 Marketing Plan criteria to these loads.

F. Energy provided with firm power will be based upon the customer—s monthly system load factor.

G. Any electric service contract offered to a new customer shall be executed by the customer within six months of a contract offer by Western, unless otherwise agreed to in writing by Western.

H. The initial resource pool will be dissolved subsequent to the closing date for executing firm power contracts. Firm power not under contract will be used as determined by Western.

I. The minimum allocation shall be 100 kilowatts (kW).

J. The maximum allocation for qualified utility and nonutility applicants shall be 5,000 kW.

K. Contract rates of delivery shall be subject to adjustment in the future as provided for in the Program.

L. If unanticipated obstacles to the delivery of hydropower benefits to Native American tribes arise, Western retains the right to provide the economic benefits of its resources directly to the tribes.

IV. General Contract Principles

Western will apply the following general contract principles to all applicants receiving an allocation of firm power under the Post 2000 Resource Pool Allocation Procedures.

A. Western shall reserve the right to reduce a customer—s summer season contract rate of delivery by up to 5 percent for new project pumping requirements, by giving a minimum of 5 years written notice in advance of such action.

B. Western, at its discretion and sole determination, shall reserve the right to adjust the contract rate of delivery on 5 years notice in response to changes in hydrology and river operations. Any such adjustments shall only take place after a public process.

C. Western shall assist the allottee in obtaining third-party transmission arrangements for delivery of firm power allocated under these procedures to new customers; nonetheless, each allottee is ultimately responsible for obtaining its own delivery arrangements.

D. Contracts entered into under the Post 2000 Resource Pool Allocation Procedures shall provide for Western to furnish firm electric service effective from January 1, 2001, through December 31, 2020.

E. The contracts entered into as a result of the procedures shall incorporate Western's standard provisions for power sales contracts, integrated resource planning, and the general power contract provisions.

VI. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (Act), requires Federal agencies to perform a regulatory flexibility analysis if a proposed regulation is likely to have a significant economic impact on a substantial number of small entities. Western has determined that this rulemaking relates to services offered by Western, and, therefore, is not a rule within the purview of the Act.

VII. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from the Office of Management and Budget (OMB) for the collection of customer information in this rule, under control number 1910–1200.

VIII. Review Under the National Environmental Policy Act

Western requested input regarding the identification of any additional environmental issues both in the Federal Register at 61 FR 2817, January 29, 1996, and at the public meetings. No environmental comments were received. Therefore, Western has determined that

the analysis in the Program Environmental Impact Statement is sufficient for this action and current DOE regulations indicate that no further National Environmental Policy Act documentation is required.

IX. Determination Under Executive Order 12866

DOE has determined this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Issued at Washington, D. C. on July 30, 1996.

Joel K. Bladow,

Assistant Administrator.

[FR Doc. 96–20078 Filed 8–6–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5547–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Construction Grants Delegation to States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Construction Grants Delegation to States, EPA No. 0909.04; OMB No. 2040–0095; approved for use through 12/31/96. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 7, 1996.

ADDRESSES: U.S. Environmental Protection Agency, Office of Wastewater Management (4201), 401 M Street, S.W., Washington, D.C. 20460. A copy of the ICR may be obtained, without charge, from the program official shown below.

FOR FURTHER INFORMATION CONTACT: Arnold Speiser, U.S.E.P.A., Municipal Assistance Branch (4204), 401 M Street, S.W., Washington, D.C. 20460; telephone 202–260–7377; facsimile 202–260–1827; E-Mail Speiser.Arnold @epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are States which administer elements of the construction grants program under a delegation agreement with EPA and municipalities which received construction grants from EPA.

Title: Construction Grants Delegation to States; OMB No. 2040–0095; approved for use through 12/31/96.

Abstract: The purpose of this ICR is to revise and extend the current clearance for the collection of information under the Construction Grants Program Delegation to States, 40 CFR Part 35 Subpart J, and Title II of the Clean Water Act (CWA). While the Construction Grants Program is being phased out and replaced by the State Revolving Loan Fund (SRF) program, collection activities for the Construction Grants Program must continue until program completion. The program includes reporting, monitoring and program requirements for municipalities and delegated States.

The information collection activities described in this ICR are authorized under Sections 205(g) and 518(e) of the Clean Water Act as amended, 33 USC 1251 et seq, and under 40 CFR Part 35 Subpart J. The requested information provides the minimum data necessary for the Federal government to maintain appropriate fiscal accountability for use of Section 205(g) construction grant funds. The information is also needed to assure adequate management overview of those State project review activities that are most important to fiscal and project integrity, design performance, Federal budget control, and attainment of national goals.

Managers at the State and Federal levels both rely on the information described in this ICR. State managers rely on the information for their own program and project administration. Federal managers rely on this information to assess, control, and predict the impacts of the construction grants program on the Federal Treasury and future budget requirements. Federal managers also use this information to respond to OMB and Congressional requests and to maintain fiscal accountability.

In addition, builders of wastewater treatment plants use the information discussed in this ICR. The builders of these plants assess and use the information in the Innovative/ Alternative Technology Data Base File to obtain technical information on innovative or alternative wastewater treatment systems.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g, permitting electronic submission of responses.

Burden Statement

Respondents: States and municipalities.

Estimated Number of Respondents: 44.

Frequency of Response: 137 per year.

Responses Per Respondent: 3.1 per year.

Estimated Total Annual Hour Burden: 8,457 hours.

Average Burden Hours Per Response: 58.

Estimated Total Annualized Cost Burden: $284,747.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 26, 1996.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 96–20110 Filed 8–6–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5549–1]

OMB Review of Agency Information Collection Activities; Renewal Request for OMB No. 2070–0052

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Office of Pesticide Programs, within the Office of Prevention, Pesticides and Toxic Substances, has forwarded the Information Collection Request (ICR) entitled: Compliance Requirement for the Child-Resistant Packaging (OMB Control No. 2070–0052; EPA ICR No. 0616.06) to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument. The Agency is requesting the renewal of the existing approval, which is scheduled to expire on October 31, 1996. A Federal Register notice proposing this submission and providing 60 days for public comment on the request and the contents of this ICR was issued on May 15, 1996 (61 FR 24486). EPA did not receive any comments during the comment period.

DATES: Comments must be submitted on or before September 6, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0616.06.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses: Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2137), 401 M Street, SW, Washington, DC 20460, with a copy also sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503. Please refer to EPA ICR No. 616.06 and OMB Control No. 2070–0052 in any correspondence.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection activity.

ICR Numbers: EPA ICR No. 616.06 and OMB No. 2070–0052.

Current Expiration Date: Current OMB approval expires on October 31, 1996.

Title: Compliance Requirement for the Child-Resistant Packaging Act.

Abstract: Section 25 (c)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) establishes standards for the packaging of pesticides or devices to protect children and adults from serious illness or injury resulting from accidental ingestion or contact with these pesticides or devices. These standards are designed to be consistent with those under the Poison Prevention Packaging Act, administered by the Consumer Product Safety Commission (CPSC). The Poison Prevention Packaging Act previously included the packaging of pesticides, but was amended in 1976 to exclude them and that responsibility now rests with EPA.

EPA's child-resistant packaging (CRP) regulations reference the CPSC packaging standards and protocol testing procedures for CRP to avoid duplicative testing of packages for pesticidal and nonpesticidal purposes.

To ensure that all pesticide registrants are in compliance with the revised effectiveness standards and protocol test procedures, by January 21, 1998 all registrants subject to CRP (unless exempted under 40 CFR 157.24) must submit (1) a new certification and (2) a description of the type of package used and its designation using the American Society for Testing and Materials (ASTM) Standard D3475–95 ''Standard Classification of Child-Resistant Packages''. The ASTM Standard D3475–95 provides uniform terminology and universal descriptions of various types of CRPs. The statements ''I certify that the packaging used for this product meets the standards of 40 CFR 157.32, including the revised effectiveness standards in 16 CFR 1700.15(b), when tested by the revised testing procedures in 16 CFR 1700.20, as published in 60 FR 37710 (July 21, 1995),'' and ''the type of package is a (*describe closure*) with (*describe method of using closure*), ASTM Type ____ with a (*describe bottle*),'' will suffice for this purpose.

After January 21, 1998 CRP certification will usually be conducted only when a registrant notifies EPA by application of their intention to either change packaging, enter the residential market, or otherwise become subject to CRP regulations.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.7 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Respondents/Affected Entities: Registrants of household pesticides.

Estimated No. of Respondents: 449 registrants.

Estimated Total Annual Burden on Respondents: 763 hours.

Frequency of Collection: On occasion.

Dated: August 1, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–20106 Filed 8–6–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5548–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the data collection instrument.

DATES: Comments must be submitted on or before September 6, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202)260–2740, and refer to EPA ICR No. 1432.16

SUPPLEMENTARY INFORMATION:

Title: ''Recordkeeping and Periodic Reporting of the Production, Import, Export, Recycling, Destruction, Transhipment and Feedstock Use of Ozone-depleting Substances.'' (OMB Control Number: 2060–0170. EPA ICR Number: 1432.16.) This is a renewal of a currently approved collection.

Abstract: EPA monitors production, import, export, transformation,

destruction of controlled substances and special exemptions beyond the phaseout of class I controlled substances through reporting requirements that are designed to:

(1) Satisfy U.S. obligations under the international treaty, the Montreal Protocol on Substances that Deplete the Ozone Layer and fulfill statutory obligations under CAA section 603(b);

(2) Report to Congress on the production, use and consumption of class I and class II controlled substances as statutorily required in Section 603(d) of the CAA;

(3) Ensure compliance with the exempted limits on production, import, export after the phaseout and ensure a level playing field for those companies allocated allowances for these exemptions; and

(4) Address Federal and industry concerns regarding illegal imports of newly produced and previously used controlled substances that are undercutting U.S. markets.

The information submitted to EPA is maintained in a Tracking System that allows the Agency:

(1) to maintain control over total production and consumption of controlled substances to satisfy conditions of the CAA and fulfill U.S. obligations under the Protocol, and

(2) to monitor compliance with limits and restrictions on production, imports, exports and specific exemptions to the control of class I and class II controlled substances.

EPA uses the information to direct special attention to illegal activities associated with the import of both newly produced and previously used substances and the avoidance of the tax on these chemicals, such activities make the substances more available, reduce the incentive to shift to alternatives, and penalize companies who are complying with U.S. laws. EPA is an active part of the Federal inter-agency taskforce conducting nationwide enforcement actions. The information provided to EPA in response to the accelerated phaseout regulations often form the basis for cases.

Burden Statement: The following is a Table summarizing the burden hours for compiling information and submitting it to EPA Headquarters:

Collection activity	Number of respondents	Responses/respondent	Total responses	Hours per response	Total hours
Producer's Report	8	4	32	16	512
Importer's Report	6	4	24	16	384
Notification of Trade	2	1	2	2	4
Export Report	10	1	10	120	1,200
Lab Certification	1,000	1	1,000	1	1,000
Class II Report	14	4	56	16	896
Transformation & Destruction	15	1	15	120	1,800
Essential Use &	12	4	48	32	1,536
Lab Suppliers	25	4	100	32	3,200
Total hours					10,532

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Producers, importers, transhippers, and exporters of ozone-depleting substances.

Estimated Number of Respondents: 1092.

Frequency of Response: quarterly.

Estimated Total Annual Hour Burden: 10,532 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1432.16. and OMB Control No. 2060–0170 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460 and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: July 31, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–20111 Filed 8–6–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5548–6]

Stakeholders' Meeting on Whole Effluent Toxicity (WET) Implementation Issues

ACTION: Notice of Stakeholders' Meeting on Whole Effluent Toxicity (WET) Implementation Issues and Request for Additional Implementation Issues.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a stakeholder's meeting for reviewing WET implementation issues to be held on September 24–26, 1996 at the Georgetown University Conference Center. WET implementation issues which were raised by stakeholders at a May 16, 1996 scoping meeting are described below. EPA is soliciting additional issues for discussion at the September 1996 meeting.

DATES: The stakeholders' meeting on WET implementation issues is scheduled for Tuesday, September 24, through Thursday, September 26, 1996. Meeting attendees should register by August 30, in order to allow EPA to plan facilitation of breakout sessions. Additional implementation issues should be submitted on or before September 3, 1996 to Debra Denton, EPA, via fax at (415) 744–1873 or electronic mail: denton.debra@epamail.epa.gov.

ADDRESSES: The stakeholders' meeting will be held at the Georgetown University Conference Center in Washington, DC. To pre-register for the meeting, please fax your first and second preferences for breakout sessions along with your name, title,

organization, mailing address, phone number, fax number, and E-mail address (if available) to (703) 903–1374, attention Ms. Betty Peterson, Science Applications International Corporation, 1710 Goodridge Drive Mail Stop 1–11–7, McLean, Virginia 22102; phone number (703) 917–8240.

FOR FURTHER INFORMATION: To reserve a room for the meeting, contact Georgetown University Conference Center, 3800 Reservoir Road, NW, Washington, DC 20057; to reserve single rooms @ $108 + 13% DC tax + $1.50 occupancy tax and double rooms @ $133 + 13% DC tax + $1.50 occupancy tax. Rates will be guaranteed until September 3, 1996. Parking is $8/day for hotel guests and other conference participants. Phone: (202) 687–3200, fax (202) 687–3291.

Transportation from the area airports can be made by: contacting the Washington Flyer to arrange shuttle service from Washington National and Washington Dulles Airports at (703) 685–1400.

The blue Georgetown University Transportation Service (GUTS) Shuttle from Dupont Circle Metro and Rosslyn Metro to the Leavy Center at Georgetown University runs: 6:15 am to 9:30 am every 15 minutes and 9:45 am to 8:40 pm every hour. Cost is $1.00. Phone: (202) 687–4364.

SUPPLEMENTARY INFORMATION:

Draft Agenda

Tuesday, September 24, 1996

11:00–1:00 pm Registration and pick up meeting package
1:00–3:00 pm Plenary session, goals and ground rules
3:00–5:00 pm Breakout sessions to discuss and prioritize issues

Wednesday, September 25, 1996

8:00–12:00 am Continuation of breakout sessions
12:00–1:00 pm Lunch
1:00–4:00 pm Continuation of breakout sessions
4:00–5:00 pm Large group session

Thursday, September 26, 1996

8:00–12:00 pm Breakout sessions
12:00–1:00 pm Lunch
1:00–5:00 pm Large group session presentations and next steps
5:00 pm Adjourn

Background

The U.S. Environmental Protection Agency's (EPA) National Pollutant Discharge Elimination System (NPDES) permit program utilizes Whole Effluent Toxicity (WET) testing and monitoring to ensure that ''no toxics in toxic amounts'' will be discharged into the Nation's waters. Over the past few years, a number of issues have arisen as a result of increasing experience with WET limits and monitoring requirements. EPA is undertaking a series of initiatives designed to make any appropriate ''mid-course'' adjustments reflecting the science underlying WET, as well as to better support ongoing WET implementation. During September 1995, the Society of Environmental Toxicology and Chemistry (SETAC) sponsored a workshop on WET in Pellston, Michigan. This workshop was co-funded by the American Industrial Health Council, the Association of Metropolitan Sewerage Agencies, and EPA. The purpose of the Pellston Workshop was for nationally recognized scientists from government, academia and industry to look at the scientific basis of the WET program. SETAC will publish written proceedings from this workshop shortly. EPA held an open forum on December 5, 1995, in Crystal City Virginia to report results of the Pellston WET Workshop to interested stakeholders. At that time, EPA promised to hold an open meeting to discuss the implementation issues surrounding WET.

Today, EPA is announcing a stakeholders' meeting for reviewing WET implementation issues to be held on September 24–26, 1996 at the Georgetown Conference Center in Washington, DC. The purpose of this meeting is to examine issues surrounding the implementation of the WET program. EPA will consider all the points raised, but the Agency cannot make policy decisions at this meeting. The Agency will, however, develop a follow-up action plan at the conclusion of the meeting. In the interim, it is EPA's position that the WET program is technically and scientifically based and that the options and suggestions resulting from the implementation meeting being announced today will only serve to strengthen the existing WET program.

In order to prepare for the September meeting, the Agency held a small group scoping meeting on May 16, 1996. EPA invited States, environmental groups, and members of the regulated community to attend this meeting. The attendees at the small group WET scoping meeting included the American Auto Manufacturers Association (AAMA), the American Forestry and Paper Association (AFPA), National Council for Air and Stream Improvement (NCASI), the Association of Metropolitan Sewerage Agencies (AMSA), the American Petroleum Institute (API), the Western Coalition of Arid States (WESTCAS), and the EPA. At this scoping meeting the participants listed out the issues which were of most concern to their organizations with respect to WET implementation. A summarized list of these WET implementation issues raised at the May 16, 1996 scoping meeting follows and is broken out into four categories: Water Quality Criteria/ Standards; Exposure Assumptions; NPDES Permits; and Enforcement/Compliance issues.

Water Quality Criteria/Standards Issues

1. Narrative vs. numeric WET criteria: With respect to WET: (1) Should EPA guidance clarify that State and Tribal WET criteria can be written as narrative with implementation procedures (e.g., no toxics in toxic amounts) or numeric (e.g., 1.0 TUc, chronic toxic unit), or on a case-specific basis? (2) Should different segments of a waterbody have different water quality standards, which vary in criteria or beneficial uses? (3) How should toxicity, which does not cause an exceedance of a water quality standard, be addressed?

2. Duration, frequency and magnitude criteria components: With respect to WET: (1) Are the current criteria protective for saltwater, estuarine, intermittent or variable flow discharges? How should these factors be considered in criteria development (e.g., should duration of the criteria be made consistent with the exposure period used in the tests and permit limits?). (2) Since most chronic test durations have become abbreviated from 30 to 7 days, should the acute and chronic toxicity criteria be re-defined to be made consistent with the toxicity test method frequency? (3) Should EPA re-evaluate the toxic unit definitions, data supporting the one hour duration period for acute criteria and the once in 3 year exceedance frequency exposure and re-emphasize support of inhibition concentration response (IC25) in determining test results.

3. Flexibility vs. consistency in WET criteria: (1) Where is the balance between flexibility and consistency in the application of WET criteria? (2) Is it necessary for test species to be indigenous to the receiving water? (3) Is it appropriate to allow testing with resident species (considering species-specific sensitivity to classes of toxicants) and appropriate designated uses? (4) Is there flexibility in conducting a reasonable potential analysis for WET?

4. Independent Application Policy: (1) What options are there for using WET as an indicator of water quality? (2) What options are available for consideration

of ''weight-of-evidence'' instead of independent applicability of biological assessments, WET results, and chemical analyses? (3) What does the data show with respect to WET tests predicting in-stream effects in waters having low chronic toxicity or in waters that are effluent dependent?

Exposure Assumption Issues

1. WET-specific exposure issues: Identify issues that are specific to WET as opposed to those that are in common for other parameters (e.g., exposure assumptions may be difficult for storm water discharges or for characterizing ephemeral streams)?

2. Critical flows and modeling inputs: What critical flows and types of models (e.g., dynamic models for ocean discharges) should be used in assessing exposure and beneficial use designation?

3. Application of mixing zones for WET: What are the applications (e.g., critical flows) and limitations for WET mixing zones in saltwater, freshwater, storm events, and flash floods? Should WET criteria be applied at the end-of-pipe? Under what circumstances is it appropriate to apply WET criteria at the end-of-pipe instead of allowing a mixing zone?

4. Balancing exposure assumptions with test duration: Is it necessary that toxicity test method duration match expected the criteria exposure duration?

5. Balancing test method dilution water with receiving water characteristics: (1) What test species should be used when testing a freshwater discharge to an estuarine water body, especially when testing at high effluent concentrations? (Sometimes ionic imbalances can contribute to the observed WET toxicity.) (2) Will EPA reconsider the use of synthetic water which lacks the hardness, organic content, and other attenuating capacities of natural, upstream water? (3) Should test methods be conducted to take into account site-specific factors, such as ionic characteristics of receiving water?

NPDES Permit issues

1. Expression of WET limits: (1) How should WET test method variability be addressed or accounted for when reporting WET test results? (2) Should permit limits be expressed in terms of toxicity units (e.g., TUa, TUc) or should percentage of effluent (e.g., must meet at 75% effluent) be used? (3) Can permit limits account for toxic effects of ionic imbalance? (4) Should the averaging period for WET limits be consistent with the exposure period of the tests (e.g., acute WET as a 48-hour average rather than a daily maximum) or should EPA increase daily maximums to compensate for the shorter exposure period? (5) Are acute toxicity end-of-pipe limits at 1.0 acute toxic unit (TUa) or greater scientifically valid? (6) Do magnitude and exposure assumptions (e.g., 7Q10 flows vs. continuous flows or Monte Carlo models) used to develop limits reflect actual exposure? (7) How are WET limits applied to effluents discharging into intermittent and effluent-dominated streams? (8) Should permits in arid areas monitor only for acute effects if chronic limits are inappropriate and the flow is beneficial?

2. Fair notice in permit: (1) Should permits contain specific language stating what the permittee needs to do to comply with the permit requirements (vs. providing cites to regulations)? (2) How much detail is desirable? (3) Can EPA change the discharge monitoring report with respect to the certification that WET test results are accurate, because ''there is no true value [in WET tests] from which to measure deviations and to determine bias or accuracy (54 FR 50218)?''

3. Re-evaluate/define reasonable potential determinations: (1) Do small data sets critically affect the flexibility available for conducting a reasonable potential analysis? (2) Are there alternative method detection levels/quantitation levels for WET test methods which can be used in reasonable potential determinations? (3) Will reasonable potential determinations eliminate setting permit limits for water quality not limited to discharge quality?

4. Water conservation leading to toxicity—conflicting environmental goals: How should conflicting environmental goals be reconciled? For example, water conservation is not encouraged with end-of-pipe limits.

5. Tiered procedures for TRE/TIEs—cross-over to enforcement: (1) Can EPA provide guidance on when to set permit limits, establish monitoring, and begin TIE/TREs? (2) How could EPA address inconclusive TIEs/TREs? (3) Should permits only require a trigger for further testing or conducting a TIE/TRE instead of penalties? (4) Should the test species used in the toxicity identification evaluations (TIEs) or toxicity reduction evaluations (TREs) be the same test species used for NPDES compliance testing? (5) Should TIE and TRE procedures only use methods with standard and/or codified guidelines?

6. Low chronic toxicity: (1) Since many discharges have improved the quality of their discharges, the focus is moving from acute to chronic toxicity. Can EPA identify procedures to determine when apparent exceedences are caused by test variation and treatment plant fluctuations (effluent variability) and procedures for TIEs/TREs to identify and remove toxicants? (2) Evaluate whether the NOEC level may be set at >90% effluent? (3) Can chronic WET tests be used as a monitoring trigger for increased monitoring and conducting a TIE/TRE as opposed to a permit limit? (4) What are the technical limits of TIE/TRE in reducing chronic toxicity to acceptable levels?

7. Ubiquitous pollutants: What are effective ways in the permit process to deal with ubiquitous pollutants (e.g., diazinon, chlorpyrifos) that have been identified in the TRE/TIE process?

8. EPA-approved chemicals causing toxicity: (1) How could the approval process for pesticides and other chemicals (e.g., treatment additives) be reconciled with the permitting process? (2) Can permit limits for total dissolved solids or chlorides replace a WET limit when common salts are the toxicants?

9. Correlate permit limits to exposure assumptions: (1) How could permit limits be more realistically linked to exposure assumptions? (2) Can EPA encourage wider use of available exposure models? Can WET limits have mixing zones to reflect allowable dilution?

10. IU WET limits to POTWs: Should WET limits be applied to industrial users (IUs), and if so, how can test results account for downstream POTW treatment processes?

11. Reevaluation of toxic units: Which statistical endpoint is best for expressing toxicity (e.g., no observed effect concentration or effect concentration? What allowed effect or inhibition concentration (e.g., IC25) is appropriate?

12. Analytical variability in reporting (quantitation/detection issues): (1) What are the best and technically available ways to deal with test variability? (2) Are there options for addressing test-specific inter-laboratory variability in order to account for test variability in permit limits?

13. Application of test methods in permits: (1) Are non-lethal chronic endpoints equivalent to acute endpoints? (2) Is it possible to either establish test precision criteria for test methods or determine the lowest reliable level response? (3) Can EPA methods specify culture media in order to improve the health of cultures and reliable endpoints? (4) Can EPA determine the accuracy of all WET test methods? (5) How does EPA justify the *Selenastrum* 4-day growth test use of EDTA except in tests with metals

present? If algal growth test results cannot predict toxicity in a reservoir, will EPA restrict use of certain test species in large water bodies? (6) How to address toxicity caused by artifacts of the test methods. (7) How should WET testing be conducted when in-stream conditions differ substantially from WET toxicity test methods (e.g., temperature, hardness)?

Compliance and Enforcement Issues

1. Single exceedance: (1) Are there alternatives for dealing with a single test failure that results in a WET limit exceedance (e.g., further testing and TIE/TRE where appropriate, as agreed to by regulatory agencies and permittees)? (2) Can EPA evaluate the Pellston findings that concluded that usually episodic exceedances (especially one chronic test failure) would not impact the receiving system? (3) Will one violation be subject to enforcement actions?

2. Inconclusive TRE/TIEs: (1) How should inconclusive (i.e., no sources of toxicity identified) TRE/TIEs be treated by regulatory authorities? (2) Should more guidance be given on what is an acceptable TIE/TRE? (3) Should a pattern of toxicity be observed before compliance actions are initiated? (4) How should low level chronic toxicity be addressed when conducting a TIE?

3. Test/data variability in determining compliance: (1) How should EPA consider data variability when determining compliance (especially since laboratories with low test variability are more likely to detect test failure)? (2) For a LC50 value greater than 100 percent effluent, how should compliance be determined? (3) Should EPA provide a laboratory certification for WET testing and a more rigorous test acceptance criteria program?

4. Fair notice (cross over w/permits). How should permits be written to bring closure to (successful/unsuccessful) TIE/TREs?

5. ''Good actor'' relief in TIE/TRE: When WET limits continue to be exceeded while TIE/TRE is being conducted, is the permittee subject to enforcement action?

6. Ability to track permit conditions: Narrative limits could be viewed differently than numeric limits.

7. Treatment chemicals causing toxicity: How can compliance determinations account for use of EPA-registered pesticides or common salts causing ionic imbalance toxic effects from salinity?

Dated: July 31, 1996.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 96–20114 Filed 8–6–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–64031; FRL–5385–9]

Iprodione on Cowpeas; Proposed Voluntary Cancellation of Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt of Request to Cancel and Proposed Cancellation Order.

SUMMARY: This notice announces that EPA has received a request from Rhone-Poulenc AG Company to cancel the use of iprodione on cowpeas. Under section 6(f) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136d(f)(1)), EPA must announce the receipt of such requests and allow public comment before approving them. The registrant has requested that the comment period for this cancellation request be waived. However, the Agency will provide the public an opportunity to comment on the request and proposed cancellation order. The agency accepted Rhone-Poulenc AG Company's proposed program to relabel existing stocks and stocks of iprodione that were in the channels of trade when other amendments to the iprodione registrations (i.e., amendments that are not subject to this Notice) were approved. Relabeling was completed by May 31, 1996.

DATES: Public comment on the use deletion will be accepted until September 6, 1996.

ADDRESSES: By mail, submit comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, deliver comments to room 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket number [OPP–64031]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail, Vivian Prunier, Review Manager, Special Review Branch, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Third floor, Westfield Building, 2800 Crystal Drive, Arlington VA (703) 308–8034, e-mail: prunier.vivian@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Request for Voluntary Cancellation of Use

Under section 6(f) of the Federal Insecticide Fungicide and Rodenticide Act (FIFRA)(7 U.S.C. 136d(f)(1)), a registrant may at any time request that any of its pesticide registrations be canceled or be amended to delete one or more uses. Section 6(f) of FIFRA requires the Administrator to publish a notice of receipt of the request and allow public comment before approving such request. The Administrator may waive the comment period prior to issuing an order if the registrant requests a waiver or if the continued use of the pesticide would pose an unreasonable adverse effect on the environment.

On March 14, 1996, Rhone-Poulenc AG Company requested amendments to the registrations of its iprodione products (ROVRAL Fungicide (EPA Reg. No. 264–453), ROVRAL 4 Flowable Fungicide (EPA Reg. No. 264–482) and ROVRAL WG Fungicide (EPA Reg. No. 264–524). Among other requested changes, Rhone-Poulenc AG Company requested voluntary cancellation of the use of iprodione on cowpeas. The other amendments were accepted in March 1996 and included reductions in the number of iprodione applications to grapes or stone fruits and a feeding restriction for peanut hay. Because these amendments do not result in the deletion of any uses of iprodione, they are not subject to this Notice. EPA has determined that iprodione residues in or on cowpeas contribute slightly to human dietary risk because iprodione residues from cattle feed are carried over into cows' milk. Iprodione residues in or on peanut hay account for the vast majority of iprodione residues in milk. This source of dietary exposure has been eliminated because the March 1996 amendment request included amending the registration for the use of iprodione on peanuts to add a feeding

restriction for peanut hay. When iprodione-treated peanut hay and iprodione-treated cowpeas are both eliminated from dairy cattle diets, the anticipated residue level of iprodione in milk, expressed as a nation-wide average, falls from 0.0073 ppm to 0.0003 ppm. These residue levels correspond to dietary risks of 3.4×10^{-6} and 1.4×10^{-7}, respectively. Therefore, the action taken in March 1996 significantly decreases dietary exposure to iprodione through consumption of milk.

II. Opportunity for Public Comment

On May 23, 1996, Rhone-Poulenc AG Company requested EPA to waive the comment period on the proposed deletion of the cowpea use. The Administrator has determined that a 30–day comment period is appropriate for the proposed action. Accordingly, persons wishing to comment may do so by September 6, 1996. Any comments received in response to this notice will be considered in EPA's final cancellation order. If no comments are received, the cancellation will go into effect on October 7, 1996, without publication of a Final Order. EPA believes the use deletion proposed by Rhone-Poulenc AG Company will help reduce the risk of unreasonable adverse effects from continued use of products containing iprodione. It is EPA's intention to approve Rhone-Poulenc AG Company's request for deletion of the use on cowpeas unless during the comment period convincing information is received that demonstrates that approval of Rhone-Poulenc AG Company's request is inappropriate.

III. Public Comment Procedures

EPA invites interested persons to submit written comments, information, or data in response to this notice. Comments must be submitted by September 6, 1996. Comments must bear a notation indicating the docket number. Three copies of the comments should be submitted to either location listed under **ADDRESSES** at the beginning of this notice.

Information submitted as a comment concerning this notice may be claimed confidential by marking any or all that information as CBI. EPA will not disclose information so marked, except in accordance with procedures set forth in 40 CFR part 2. A second copy of such comments, with the CBI deleted, also must by submitted for inclusion in the public record. EPA may publicly disclose without prior notice information not marked confidential.

Documents considered and relied upon by EPA pertaining to this notice, and all written comments filed pursuant to this notice will be available for public inspection in room 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA between 8 a.m. and 4:30 p.m., Monday through Friday, except for legal holidays.

A record has been established for this notice under docket number [OPP–64031] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record, which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this notice.

IV. Existing Stocks

Before submitting the March 14, 1996 amendment applications, Rhone-Poulenc AG Company agreed to relabel all existing stocks of iprodione products that were packaged and labeled, but had not been released for shipment, as of the date of approval of the label amendments. In a letter dated April 15, 1996, EPA accepted a Rhone-Poulenc AG Company proposal for relabeling iprodione products that were already in the channels of trade. EPA specified that all stocks of iprodione products held in warehouses were to be relabeled by May 31, 1996. Stocks held by distributors in specified states were also to be relabeled. EPA required that all iprodione products in channels of trade were to bear the new labels after May 31, 1996. Any iprodione product that does not bear the new labels after May 31, 1996 will be considered misbranded under section 2(q) of FIFRA. Under section 12(a)(1) of FIFRA, sale of misbranded products violates the Act. On June 11, 1996, Rhone-Poulenc AG Company notified EPA that the relabeling program had been completed as specified.

V. Proposed Use Deletion/Cancellation Order

The following Use Deletion/Cancellation Order and Approval of Rhone-Poulenc AG Company's request for the deletion of the use of iprodione on cowpeas will take effect on October 7, 1996 unless EPA publishes a notice in the Federal Register before that date modifying the proposed order. I approve Rhone-Poulenc AG Company's request for deletion of cowpeas from iprodione products 264–453, 264–482 and 264–524, effective October 7 1996.

List of Subjects

Environmental Protection, Agricultural Commodities, Pesticides and pests.

Dated: July 30, 1996.

Daniel M. Barolo,
Director, Office of Pesticide Programs

[FR Doc. 96–20105 Filed 8–6–96; 8:45 am]

BILLING CODE 6560–50–F

[PF–667; FRL–5388–7]

Pesticide Tolerance Petitions; Notice of Filings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces initial filings of pesticide petitions (PP) and food/feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

DATES: Comments, identified by the docket number [PF–667], must be received on or before September 6, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Offices of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson-Davis Hwy., Arlington, VA 22202. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an

ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–663]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact Robert J. Taylor, Product Manager (PM–25), Rm. 241, CM #2, 703–305–6027 or by e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and food/feed additive petitions as follows proposing the amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

INTIAL FILINGS

1. *PP 4F4346.* Monsanto Co., 700 14th St., NW., Suite 1100, Washington, DC 20005, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the plant growth regulator (hybridizing agent) clofencet [MON 21200] (2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4-pyridazinecarboxylic acid, potassium salt) in or on the following raw agricultural commodities (RACs): wheat, grain at 250 (parts per million) (ppm); wheat, hay at 40 ppm; wheat, straw at 50 ppm; wheat,forage at 10 ppm; milk at 0.02 ppm; meat* (*cattle, goats, hogs, horses and sheep) at 0.15 ppm; meat byproducts* (except kidney) at 0.5 ppm; fat* at 0.04 ppm; kidney* at 10 ppm; eggs at 1.0 ppm; poultry meat at 0.15 ppm; poultry meat byproducts at 0.20 and poultry fat at 0.04 ppm. In addition, rotational grain crop tolerances in the cereal grain crop group for grain at 20 ppm; straw at 4.0 ppm; forage at 4.0 ppm; stover (fodder) at 1.0 ppm and hay at 15.00 ppm; soybeans at 30 ppm; soybean, forage at 10 ppm and soybean, hay at 10.0 ppm. The analytical method is gas chromatography.

2. *PP 5F4449.* Quimica Agronomica de Mexico S. de R.L. MI. c/o Technology Sciences Group, Inc. 1101 17th St., NW., Washington, DC 20036, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the fungicide/bactericide gentamicin sulfate in or on the following raw agricultural commodities (RACs): apples at 0.1 ppm. The analytical method is HPLC.

3. *FAP 4H5694.* Monsanto Co., 700 14th St., NW., Suite 1100, Washington, DC 20005, proposes to amend 40 CFR part 186 by establishing a regulation to permit residues of the plant growth regulator (hybridizing agent) clofencet [MON 21200] (2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4-pyridazinecarboxylic acid, potassium salt) in or on wheat milling fractions (excluding flour) at 600 ppm.

A record has been established for this document under docket number [PF–667] (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson-Davis Hwy., Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above, will be kept in paper form. Accordingly, EPA will transfer all comments received electronically to printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 136a.

Dated: July 26, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–19968 Filed 8–6–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181021; FRL 5387–7]

Bifenthrin; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California Department of Pesticide Regulations (hereafter referred to as the ''Applicant'') to use the pesticide bifenthrin to treat up to 22,000 acres of broccoli, cauliflower, cabbage and rapini and 40,000 acres of lettuce to control silverleaf whitefly. An emergency exemption for this use has been requested for the previous 6 years, and a complete application for registration of this use and a tolerance petition has not been submitted to the Agency. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before August 22, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181021,'' should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special

characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181021]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of bifenthrin on lettuce, broccoli, cauliflower, cabbage, and rapini to control silverleaf whitefly (SWF). Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, California still does not have material that will provide them with satisfactory late season control of the silverleaf whitefly. The registrant (Bayer, Inc.) for the registered alternative product imidacloprid *Admire/Provado* does not want growers to use imidacloprid throughout the growing season in order to eliminate any potential that the whitefly may develop a resistant gene to imidacloprid. When used as a combination, Imidacloprid and bifenthrin allowed the growers to maintain the ability to grow a marketable crop in 1993 and 1994. Without the use of bifenthrin, the Applicant claims that growers will suffer significant economic loss this growing season.

Under the proposed exemption, a maximum of four applications for lettuce and five applications for broccoli, cauliflower, cabbage and rapini would be made at 0.08 to 0.1 lb. active ingredient (a.i./A) [5.2 to 6.4 fl. ozs.] of product per acre by ground or air equipment. Not to apply within 20 days of harvest. Do not apply by ground equipment within 25 feet or by air within 150 feet of lakes reservoirs, rivers, permanent streams or natural ponds estuaries and commercial fish farms. A 200-yard buffer for aerial application and 40 yards for ground application shall be observed around aquatic habitats containing endangered species (desert pupfish, and Delhi Sands Flower Loving Fly).

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application if a specific exemption use has been requested in any 3 previous years, and a complete application for registration of the use and/or a tolerance petition has not been submitted to the Agency [etc., see 40 CFR 166.24]. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–181021] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Department of Pesticide Regulations.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: July 26, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–19966 Filed 8–6–96; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–00194; FRL–5388–9]

Cleaner Technologies Substitutes Assessment; Lithographic Blanket Washes; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability for Comment.

SUMMARY: EPA is announcing the availability of the draft of a document entitled ''Cleaner Technologies Substitutes Assessment: Lithographic Blanket Washes.'' This document details the findings of the EPA's Design for the Environment Lithography Project.

DATES: Comments are due no later than September 23, 1996.

ADDRESSES: Comments should be mailed to: Jed Meline, U.S. Environmental Protection Agency, Design for the Environment Program (DfE), Mail Code 7406, 401 M St., SW., Washington, DC. 20460. The complete report is available by Document Number EPA (744–R–95–008). Free copies can be obtained by contacting EPA's Pollution Prevention Information Clearing House (PPIC), Environmental Protection Agency, 401 M St., SW., Mail Code 3404, Washington, DC. 20460.

Telephone (202) 260–1023; Fax (202) 260–0178. Or, review the report on the DfE home page at http://es.inel.gov/dfe.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–00194]. No CBI should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: Jed Meline, telephone (202) 260–1678, Design for the Environment Program, Office of Pollution Prevention and Toxics, Mail Code 7406, 401 M St., SW., Washington, DC. 20460, e-mail: meline.jed@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Electronic Availability: Electronic copies of the draft document are available from the EPA Public Access gopher (gopher.epa.gov) at the Environmental Sub-Set entry for this document under ''Rules and Regulations.''

The EPA's Design for the Environment (DfE) Program began working with the lithographic sector of the printing industry In 1993. This work ultimately formed the basis of the DfE Lithography Project. Concentrating on the process of blanket washing, the partners of the Lithography Project, in a voluntary cooperative effort, evaluated 37 different blanket wash products. Information was gathered on the performance, cost, and health and environmental risk trade-offs of each blanket wash. The goal of the Project is to provide information that will help lithographers make more informed decisions about the blanket wash products they bring into their facilities, and thus, help them design an operation which is more environmentally sound, safer for workers, and more cost effective. With this notice, EPA is announcing the availability of the draft document entitled ''Cleaner Technologies Substitutes Assessment: Lithographic Blanket Washes,'' detailing the information and data gathered throughout the course of the Lithography Project.

A record has been established for this notice of availability under docket number [OPPTS–00194] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice of availability, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Dated: July 31, 1996.

William H. Sanders III

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 96–20104 Filed 8–6–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5548–4]

Southern Crop Site; Notice of Proposed Purchaser Agreement

Notice is hereby given that a proposed prospective purchaser agreement associated with Southern Crop Superfund Site in Palm Beach, Florida has been approved by the Agency and by the Department of Justice. The Prospective Purchaser Agreement would resolve certain potential EPA claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Action on 1986 (''CERCLA''), against John McCrocklin, the prospective purchaser (''the purchaser'').

The settlement would require the purchaser to provide for proper disposal of any wastes, debris, or other materials generated by a proposed railroad realignment over a portion of the Southern Crop Site within 90 days for any wastes so generated, and to provide EPA access to the Site. EPA will consider public comments on the proposed agreement for thirty (30) days. EPA may withdraw from or modify the proposed purchaser agreement should such comments disclose facts or considerations which indicate the proposed agreement is inappropriate, improper, or inadequate.

Copies of the agreement are available from: Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Waste Management Division, 345 Courtland Street, N.E., Atlanta, Georgia 30365, 404/347–5059, vmx. 6169.

Written comments must be submitted to Ms. Batchelor at the above address by September 6, 1996.

Dated: July 19, 1996.

James S. Kutzman,

Acting Director, Waste Management Division.

[FR Doc. 96–20113 Filed 8–6–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5548–7]

Notice of Availability of and Initiation of a 30 Day Public Comment Period for an Administrative Order on Consent for De Minimis Waste Contributors Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice is hereby given that on July 24, 1996, an administrative order on consent (''Order'') between the United States Environmental Protection Agency, Region VIII and The Cleveland-Cliffs Iron Company, Union Pacific Resources Company and Union Pacific Resources Group, Inc. (collectively, ''the Settling Parties'') was approved by the Department of Justice, Environmental and Natural Resources Division, on behalf of the Attorney General of the United States, for the Summitville Mine Superfund Site (''Site'').

Because of the minimal nature, by volume and toxicity, of the hazardous substances allegedly contributed by the Settling Parties to the Site, EPA determined that the Settling Parties are eligible for a *de minimis* settlement in accordance with Section 122(g) of CERCLA. According to the terms of the Order, in exchange for a cash payment of $700,000, including a premium, the Settling Parties have resolved their potential civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607 and Section 7003 of the Resource Conservation and Recovery

Act, as amended, 42 U.S.C. 6973 for the Site.

EPA Region VIII will receive comments relating to the proposed Order for a period of thirty days from the date of publication of this notice. Comments should be addressed to Nancy Mangone, Enforcement Attorney (8ENF–L), U.S. EPA Region VIII, 999 18th Street, Denver, Colorado 80202 and should refer to the Summitville Mine Superfund Site, EPA Docket No. CERCLA–VIII–96–23, Administrative Order an Consent between U.S. EPA Region VIII and The Cleveland-Cliffs Iron Company, Union Pacific Resources Group, Inc. and Union Pacific Resources Company. In accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request a public meeting in the affected areas.

The proposed Order may be examined in person at the Superfund Records Center, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202, (303) 312–6111. A copy of the Order may also be obtained by mail from Mr. James Worden of the EPA Region VIII Superfund Records Center (8EPR–PS) at the address listed above. In requesting a copy, please refer to the referenced case and number. There is no cost for requesting this document.

Max H. Dodson,

Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, U.S. EPA Region VIII.

In the Matter of: Summitville Mine Superfund Site, Site No. Y3; The Cleveland-Cliffs Iron Company, Union Pacific Resources Group, Inc. and Union Pacific Resources Company, Respondents. Proceeding Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. § 9622(g)(4)). EPA Docket No. CERCLA–VIII–96–23.

CERCLA Section 122(G)(4) De Minimis Waste Contributor Administrative Order

I. Jurisdiction

1. This Administrative Order on Consent (''Consent Order'' or ''Order'') is issued pursuant to the authority vested in the President of the United States by 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), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency (''EPA'') by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14–14–E. This authority has been redelegated to the Assistant Regional Administrator for Ecosystem Protection and Remediation.

2. This Order is issued to The Cleveland-Cliffs Iron Company, Union Pacific Resources Company and Union Pacific Resources Group, Inc. Each Respondent agrees to undertake all actions required by this Consent Order. Each Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or the implement or enforce its terms.

II. Statement of Purpose

3. By entering into this Consent Order, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g), that allows Respondents to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607 and Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, for injunctive relief with regard to the Site, and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating three of the potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with Respondents for their fair share, as determined by EPA, of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and to provide full and complete contribution protection for Respondents with regard to the Site pursuant to Sections 122(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9622(f)(2) and 9622(g)(5).

III. Definitions

4. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

''CERCLA'' shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

''Consent Order'' or ''Order'' shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

''Day'' shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

''EPA'' shall mean the United States Environmental Protection Agency and any successor departments or agencies.

''EPA Hazardous Substance Superfund'' shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. 9507.

''Information currently known to the United States'' shall mean that information and those documents contained in the Administrative Record and Site File for the Site as of the effective date of this Order.

''Interest'' shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. 9607(a).

''New Information'' shall mean information not contained in the Administrative Record or Site File for the Site as of the effective date of this Order.

''Paragraph'' shall mean a portion of this Consent Order identified by an arabic numeral.

''Parties'' shall mean EPA and the Respondents.

''Respondents'' shall mean The Cleveland-Cliffs Iron Company (CC), Union Pacific Resources Company and Union Pacific Resources Group, Inc. (together, UP).

''Response Costs'' shall mean all costs of ''response'' as that term is defined by Section 101(25) of CERCLA.

''Section'' shall mean a portion of this Consent Order identified by a roman numeral.

''Site'' shall mean the Summitville Mine Superfund Site Remedial Investigation/Feasibility Study Area within Rio Grande County, Colorado. Approximately 550 acres of the Site, known a the Summitville Minesite, have been disturbed by mining activities and is currently undergoing remedial action. As depicted on the map attached as Appendix A, the Site consists of portions of the Alamosa River Watershed EPA believes may have been impacted by releases of hazardous

substances from the Summitville Minesite. More specifically, the Site includes the following areas: Area 1—*Summitville Mine Site*—The area within the mine permit boundaries; Area 2—*Wightman Fork*—The Wightman Fork and associated wetlands between the down stream mine permit boundary to the confluence with the Alamosa River; Area 3—*Alamosa River*—The Alamosa River and associated wetlands from the confluence with the Wightman Fork downstream to the inlet of the Terrace Reservoir; Area 4—*Terrace Reservior*—The area which contains the Terrace Reservoir; and Area 5—*Below Terrace Reservior*—The area below the Terrace Reservoir which has been impacted by contamination transported by the Alamosa River and irrigation canals.

''United States'' shall mean the United States of America, including its departments, agencies and instrumentalities.

IV. Statement of Facts

5. The United States Environmental Protection Agency (EPA) initiated removal response actions at the Site on December 18, 1992 to address releases or threatened releases of hazardous substances into the Alamosa River and surrounding environment pursuant to the President's authority under Sections 104 and 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 42 U.S.C. 9604 and 9606(a) (CERCLA).

6. On May 31, 1994, EPA listed the Site on the National Priorities List as a result of releases or threatened releases of hazardous substances at or from the Site.

7. On December 15, 1994, EPA issued 4 Interim Records of Decision selecting the interim remedial actions to be implemented for the following activities and/or areas at the Summitville Mine Site: Water Treatment (WT IROD), Reclamation, the Heap Leach Pad (HLP IROD) and the Cropsy Waste Pile, Beaver Mud Dump/Summitville Dam Impoundment, and Mine Pits (CWP IROD).

8. As of September 30, 1995, the United States incurred $77 million in response costs responding to the release or threatened release of hazardous substances at or in connection with the Site. The United States continues to incur response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site.

9. EPA alleges that the Respondents are liable for reimbursement of the United States' response costs pursuant to Section 107 of CERCLA, 42 U.S.C. 9607.

10. Between April 1, 1996 and December 31, 1969, CC, UP and the W.S. Moore Co. participated in exploration and related activities at the Site. These activities initially were conducted by only W.S. Moore and UP. On October 1, 1967, CC acquired a working interest in the exploration and related activities at the Site pursuant to an Interim Management Agreement. In August 1, 1968, the Interim Management Agreement was replaced by the Management Agreement. On December 31, 1969, the three participants ceased these exploration and related activities by terminating the Management Agreement.

11. The exploration and related activities at the Site referred to in Paragraph 10 above included: (1) Sinking of one exploratory shaft, referred to herein as the Missionary Shaft, approximately 400 ft. to provide access to the Missionary Vein; (2) underground drifting from the Missionary Shaft to explore the extent of the Missionary Vein; (3) construction of a dam for the future impoundment of tailings; (4) partial construction of an ore crusher and mill facility (the ore crusher was shipped and uncrated, but never installed or used); (5) implementation of an exploratory sampling program that included core and channel sampling; and (6) rehabilitation and renovation of 2200 ft. of the Reynolds tunnel. CC and UP did not, however, complete or operate the crusher and mill facility and did not generate or dispose of tailings at the Site.

12. These activities caused the generation or disposal of approximately 12,000 cubic yards (yds.^{3}) of waste rock and other mine waste material. Based on Information currently known to the United States, EPA and the Respondents agree that not more than 7,500 yds.^{3} of this material was waste rock containing hazardous substances. The Parties agree that the remainder of this material was inert, non-hazardous substance-bearing andesite. EPA alleges that the waste rock generated during the Respondents' activities at the Site is a source of hazardous substances that have been released into the disturbed surface area of the Site and have adversely impacted the quality of water at or emanating from the Site.

13. The total volume of waste rock, tailings and other mine waste (including the Heap Leach Pad) requiring remediation at the Site is approximately 11 million yds.^{3} According to the WT IROD, approximately 321,000 pounds of copper per year, if left untreated would contaminate the receiving waters surrounding the Site, including the Wightman Fork and Alamosa River. EPA has determined parties are eligible for a *de minimis* settlement if their contribution of mine waste and metals loading is equal to or less than 3% of the total volume of hazardous substances contributed to each of these media. The Respondents' contributions of hazardous substances to these media are below the 3% *de minimis* cut-off established by EPA for the Site.

14. Based on Information currently known to the United States, EPA calculated the Respondents *de minimis* eligibility as follows: EPA has estimated that the amount of hazardous substances allegedly contributed to the Site by Respondents constitutes .0007% of the total volume of waste rock, tailings or mine waste requiring remediation at the Site and .65% of the copper loading to the waters at or emanating from the Site.

15. The material allegedly generated and disposed of by the Respondents therefore involves only a minor portion of the total hazardous substances generated or disposed of at the Site. EPA has also concluded that the hazardous substances allegedly contributed to the Site by Respondents are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

16. EPA calculated the settlement amount to be paid by the Respondents based on the volume and toxicity of the Respondents' contribution of hazardous substances at the Site, the cost to remediate that contribution, a percentage of sitewide costs and an appropriate ''premium'' payment. EPA believes that the 7,500 yds.^{3} of waste rock containing hazardous substances generated by the Respondents was disposed of in the general area between the Beaver Mud Dump and the Summitville Dam Impoundment. The amount of waste rock, tailings, and other mine waste being remediated pursuant to the CWP IROD is estimated to have a volume of 4,500,000 yds.^{3} The Respondents' alleged contribution of hazardous substances to be remediated pursuant to the CWP IROD is .16%. The cost to remediate the Respondents' contribution of mine waste was therefore calculated based on its fair share of the actual cost of performing the CWP removal action and the estimated future cost of performing the CWP IROD remedy. The cost to remediate the Respondents' contribution of copper loading to waters at and emanating from the Site was calculated based on its fair share of past

and estimated future costs of performing water treatment.

17. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund will be $120 million. The payment required to be made by the Respondents pursuant to this Order represents only a minor portion of the response costs to be recovered for the cleanup of the Site.

V. Determinations

18. Based upon the Statement of Facts set forth above and on the Information currently known to the United States, EPA has determined that:

a. The Site is a ''facility'' as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).

b. Each Respondent is a ''person'' as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).

c. Each Respondent is a ''potentially responsible party'' within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

d. There has been an actual or threatened ''release'' of a ''hazardous substance'' from the Site as those terms are defined in Sections 101(22) and (14) of CERCLA, 42 U.S.C. 9601(22) and (14).

e. The amount of hazardous substances contributed to the Site by each Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Respondent are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A).

f. As to each Respondent, this Consent Order involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

g. The terms of this Consent Order are consistent with EPA policy and guidance for settlements with *de minimis* waste contributors, including but not limited to, ''Standardizing the *De Minimis* Premium,'' (July 7, 1995), ''Streamlined Approach for Settling with *De Minimis* Waste Contributors under CERCLA Section 122(g)(1)(A),'' OSWER Directive No. 9834.7–1D (July 30, 1993), and ''Methodology for Early *De Minimis* Waste Contributor Settlements under CERCLA Section 122(g)(1)(A),'' OSWER Directive No. 9834.7–1C (June 2, 1992).

h. Prompt settlement with each Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

i. The settlement of this case without litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving any liability that the Respondents may have for response actions and response costs with respect to all releases or threatened releases at or in connection with the Site.

V. Order

19. Based upon the Information currently known to the United States and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby *Agreed to and ordered*:

VI. Parties Bound

20. This Consent Order shall apply to and be binding upon EPA and upon Respondents and their successors and assigns. Any change in ownership or corporate or other legal status of a Respondent including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to execute and bind legally the party represented by him or her.

VII. Payment

21. Within 10 days of the effective date of this Order, Respondents shall pay a total of $700,000 to the Hazardous Substance Superfund as provided below. The obligation to pay the United States this amount is joint and several among the Respondents.

22. Payment shall be made by cashier's check(s) made payable to ''EPA Hazardous Substance Superfund.'' Each check shall reference the Site name, the name and address of the Respondent, EPA CERCLA Number 08–Y3 and DOJ Case No. 90–11–1133A and shall be sent to: Mellon Bank, EPA Region VIII, Attn: Superfund Accounting, P.O. Box 360859M, Pittsburgh, PA 15251.

23. If the Respondents fail to make full payment within the time required by Paragraph 21. Respondents shall pay Interest on the unpaid balance. In addition, if Respondents fail to make full payment as required by Paragraph 21, the United States may, in addition to any other available remedies or sanctions, bring an action against the Respondents seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. 9622(l), for failure to make timely payment.

24. The Respondents' payment includes an amount representing the Respondents' fair share of: (a) past response costs incurred at or in connection with the Site; (b) projected future response costs to be incurred at or in connection with the Site; and (c) a premium to cover the risks associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total response costs upon which Respondents' payment is based.

25. Payments made under this Section shall be placed in a site-specific ''special'' or ''reimbursable'' account by EPA. This site-specific reimbursable account within the EPA Hazardous Substance Superfund shall be known as the Summitville Mine Superfund Site Special Account and shall be retained and used by EPA to conduct or finance the response actions at or in connection with the Site. Upon completion of the final remedial action for the Site, any balance remaining in the Summitville Mine Superfund Site Special Account shall be transferred by EPA to the general EPA Hazardous Substance Superfund.

VIII. Certification of Respondents

26. By signing this Consent Order, each Respondent certifies, individually, that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all non-privileged documents currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to its liability under CERCLA and RCRA for ownership, operation, exploration activities or control of the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential CERCLA and RCRA liability regarding the Site after notification of such potential liability; and

c. fully complied to EPA's satisfaction with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e).

IX. Covenants Not Yo Sue

27. a. Except as provided in Section XI (Reservation of Rights) of this Order, the United States covenants not to sue or take any other civil or administrative action against each Respondent for

reimbursement of response costs or for injunctive relief pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a) or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon full payment of the amount specified in Section VII (Payment) of this Order.

b. The United States' covenant not to sue extends to Respondents, and to their predecessors-it-interest, affiliates, successors and assigns only to the extent that the liability of such predecessors-in-interest, affiliates, successors and assigns is derivative of Respondents' liability for those acts set forth in Paragraph 11, Section IV of this Order. The United States' covenant not to sue does not extend to any other person.

X. Reservation of Rights

28. The covenants not to sue by the United States set forth in Paragraph 27 of this Order do not pertain to any matters other than those expressly specified in Paragraph 27. The United States reserves, and this Order is without prejudice to, all rights against any Respondent with respect to all other matters, including but not limited to the following:

(a) Claims based on a failure to make the payments required by Section VII (Payment) of this Order;

(b) Criminal liability;

(c) Any liability against a Respondent that results from its future disposal activities at the Site; or

(d) Liability for damages for injury to, destruction of, or loss of natural resources, including any cost of assessing the injury to, destruction of, or loss of such natural resources.

29. a. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against any Respondent seeking to compel that Respondent to perform response actions at the Site and/or to reimburse the United States for additional costs of response if New Information is discovered that such Respondent contributed: (a) hazardous substances in an amount greater than 1% of the total volume of waste rock, tailings or mine waste containing hazardous substances requiring remediation at the Site; or (b) hazardous substances in an amount greater than 1.3% of the total copper loading to the waters at or emanating from the Site; or (c) hazardous substances at the Site which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

b. For purposes of Paragraph 29.a., ''New Information'' shall not include: (1) Any recalculation of the total volume of waste rock, tailings or mine waste containing hazardous substances requiring remediation at the Site based solely on Information currently known to the United States; (2) any recalculation of the Respondent's contribution of copper loading to the waters at or emanating from the Site based solely on Information currently known to the United States; or (3) any recalculation of the Respondent's contribution to copper loading to the waters at or emanating from the Site that relies upon the reduction, elimination or remediation of sources of copper loading other than the Missionary Vein.

c. In the event the United States institutes judicial or administrative proceedings against any Respondent pursuant to Paragraph 29.a. above, CC an UP shall each:

(i) be credited, in any subsequent settlement or administrative or judicial proceeding relating to the Site, $350,000 of the $700,000 payment made pursuant to Paragraph 21 of this Order;

(ii) retain any defense it may have to liability and any claim it may have under any applicable statute or the common law with regard to any additional amount demanded by the United States in any subsequent administrative or judicial proceeding relating to the Site; and

(iii) continue to grant any waiver or covenant previously granted to the United States under Section XI of this Order for the amount credited to each Respondent, but such waiver or covenant shall be null and void as to any additional amount demanded by the United States in any subsequent administrative or judicial proceeding relating to the Site.

XI. Covenant Not To Sue by Respondents

30. Each Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees with respect to the Site or this Order, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. 9507) through Sections 106(b)(2), 111, 112 or 113 of CERCLA, 42 U.S.C. 9606(b)(2), 9611, 9612 or 9613;

b. any claim arising out of response activities at the Site; and

c. any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. 9607 or 9613, relating to the Site.

31. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. 9611, or 40 CFR § 300.700(d).

32. The Respondents also waive any challenge they may have to any response action selected in any Action Memorandum, Interim Record of Decision or final Record of Decision for the Site.

XII. Effect of Settlement; Contribution Protection

33. Nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Order. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Order may have under applicable law. The United States and the Respondents each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

34. Respondents consent and agree to comply with and be bound by the terms of this Order, the United States and the Respondents agree that this Order, Respondents' consent to this Order and actions in accordance with this Order shall not in any way constitute or be construed as an admission of any liability by Respondents or of any legal or factual matters set forth in this Order. Further, neither this Order, Respondents' consent to this Order, nor Respondents' actions in accordance with this Order shall be admissible in evidence against Respondents without their consent, except in a proceeding to enforce this Order. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts and Determinations contained in this Consent Order.

35. With regard to claims for contribution against each Respondent and their predecessors-in-interest, affiliates, successors and assigns for matters addressed by this Order, the Parties hereto agree that each Respondent and their predecessors-in-interest, affiliates, successors and assigns is entitled, as of the effective date this Order, to such protection from contribution actions or claims as is

provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5) for ''matters addressed'' in this Consent Order. ''Matters addressed'' by this Order shall include all claims the United States could bring or any other civil or administrative action the United States could take against each Respondent, or their predecessors-in-interest, affiliates, successors and assigns only to the extent that their liability is derivative of Respondents' liability for those acts set forth in Paragraphs 11, Section IV of this Order, for injunctive relief or for reimbursement of response costs pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a) or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, related to the Site.

XIII. Public Comment

36. This Order shall be subject to a thirty-day public comment period in accordance with Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3), 42 U.S.C. 9622(i)(3), EPA may withdraw or modify its consent to this Order if comments received disclose any facts or considerations which indicate that this Order is inappropriate, improper, or inadequate.

XIV. Attorney General Approval

37. The Attorney General or her designee has approved the settlement embodied in this Order in accordance with Section 112(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4).

XV. Effective Date

38. The effective date of this Order shall be the date upon which the Assistant Regional Administrator, EPA Region VIII notifies the Respondents that the public comment period undertaken pursuant to Paragraph 36 of this Order has closed and that comments received, if any, do not require EPA's withdrawal from or the modification of any terms of this Order.

It is so Agreed

The Cleveland-Cliffs Iron Company

By: _____

Thomas J. O'Neil, President.

Date: _____

Union Pacific Resources Company

By: _____

V. Richard Eales, Executive Vice President and Chief Financial Officer.

Date: _____

Union Pacific Resources Group, Inc.

By: _____

V. Richard Eales, Executive Vice President and Chief Financial Officer.

Date: _____

It is so Ordered and Agreed

Environmental Protection Agency, Region VIII

By: _____

Max H. Dodson, Assistant Regional Administrator, Officer of Ecosystems Protection and Remediation.

Date: _____

[FR Doc. 96–20112 Filed 8–6–96; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or the Acquisition of Companies that are Engaged in Permissible Nonbanking Activities

National Westminster Bank Plc, London, England (''Notificant''), has given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (''BHC Act'') and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to indirectly acquire Greenwich Capital Holdings, Inc., Greenwich, Connecticut (''Greenwich'') and its subsidiaries located in the United States from the Long-Term Credit Bank of Japan, Limited, Tokyo, Japan. As a result of this acquisition, Notificant proposes to engage in the following nonbanking activities nationwide:

1. Underwriting and dealing, to a limited extent, in municipal revenue bonds, 1-4 family mortgage-related securities, commercial paper, and consumer receivable-related securities (collectively, ''bank-ineligible securities'');

2. Acting as agent in the private placement of all types of securities;

3. Buying and selling all types of securities on the order of customers as ''riskless principal'';

4. Trading in foreign exchange for its own account;

5. Trading for its own account foreign exchange forward, futures, options, and options on futures contracts for purposes other than hedging;

6. Acting as originator, principal, broker, agent, or adviser to institutional customers with respect to interest rate and currency swaps and related swap derivative products;

7. Purchasing and selling for its own account (i) gold and silver bullion, bars, rounds and coins (''precious metals''); and (ii) forward, options, futures and options on futures contracts for such precious metals for purposes of hedging positions in the underlying precious metals (''precious metals contracts'');

8. Underwriting and dealing in government obligations and money market instruments pursuant to § 225.25(b)(16) of the Board's Regulation Y (12 CFR 225.25(b)(16));

9. Acting as a futures commission merchant pursuant to § 225.25(b)(18) of the Board's Regulation Y (12 CFR 225.25(b)(18));

10. Acting as an investment or financial adviser pursuant to § 225.25(b)(4) of the Board's Regulation Y (12 CFR 225.25(b)(4));

11. Arranging commercial real estate equity financing pursuant to § 225.25(b)(14) of the Board's Regulation Y (12 CFR 225.25(b)(14));

12. Providing investment advice on financial futures and options on futures pursuant to § 225.25(b)(19) of the Board's Regulation Y (12 CFR 225.25(b)(19));

13. Making, acquiring, and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y (12 CFR 225.25(b)(1));

14. Providing securities brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y (12 CFR 225.25(b)(15)); and

15. Leasing personal or real property or acting as agent, broker, or adviser in leasing such property pursuant to § 225.25(b)(5) of the Board's Regulation Y (12 CFR 225.25(b)(5)).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

Notificant maintains that the Board previously has determined by regulation or order that the proposed activities are closely related to banking. See 12 CFR 225.25(b)(1),(4), (5), (14), (15), (16), (18), and (19). See also *The Long Term Credit Bank of Japan, Limited*, 79 Federal Reserve Bulletin 347 (1993); 79 Federal Reserve Bulletin 345 (1993); 76 Federal Reserve Bulletin 554 (1990); and 74 Federal Reserve Bulletin 573 (1988). Notificant also has stated that it will conduct the proposed activities subject

to the limitations established by the Board in its previous orders.

Notificant also takes the position that the proposed acquisition will benefit the public. Notificant states that the expected benefits to the public include increased competition, expanded products and services, and gains in efficiency. The proposed acquisition also would allow Notificant to offer customers expanded services at competitive costs. Notificant also maintains that the proposed activities would not result in any adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the notice, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than August 21, 1996. Any request for a hearing on this proposal must, as required by § 262.3(e) of the Board's Rules of Procedure (12 C.F.R. 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. The notice may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, August 1, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–20054 Filed 8–6–96; 8:45am]

BILLING CODE 6210–01–F

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 1996.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. BankAmerica Corporation, San Francisco, California; through its wholly-owned leasing subsidiary, Security Pacific Leasing Corporation, San Francisco, California, to enter into a general partnership with DFO Holding Company, Inc., San Francisco, California, a wholly-owned subsidiary of Ford Motor Credit Corporation, Dearborn, Michigan. The resulting partnership, DFO Partnership, will be formed solely to manage a fixed portfolio of leases contributed to the partnership by Security Pacific Leasing Corporation and Ford Motor Credit Corporation, all pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 1, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–20055 Filed 8–6–96; 8:45 am]

BILLING CODE 6210–01–F

OFFICE OF GOVERNMENT ETHICS

Submission for OMB Review; Comment Request for the Proposed Paperwork Renewal of the SF 278 Executive Branch Personnel Public Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics has submitted to the Office of Management and Budget (OMB) the Standard Form (SF) 278 Executive Branch Personnel Public Financial Disclosure Report which OGE sponsors for a three-year extension of approval under the Paperwork Reduction Act. The SF 278 is henceforth to be accompanied by agency notification to filers of certain modified reporting requirements not yet incorporated into the form itself; OGE also intends to work on a future modified form to eventually replace the existing SF 278.

DATES: Comments on this proposal should be received by September 6, 1996.

ADDRESSES: Comments should be sent to Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; telephone: 202–395–7316.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Office of General Counsel and Legal Policy, Office of Government Ethics, 1201 New York Avenue, NW., Washington, DC 20005–3917; telephone: 202–208–8000 (ext. 1110), FAX: 202–208–8037. A blank SF 278 form may be obtained, without charge, by contacting Mr. Gressman.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics has submitted to OMB, for three-year approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the existing SF 278 Executive Branch Personnel Public Financial Disclosure Report (OMB control number 3209–0001), without change, for a three-year extension of approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The current paperwork approval for the SF 278 is scheduled to expire at the end of

September 1996. Since, for now (see discussion below), no modification to the standard form is being proposed, OGE will not need to seek General Services Administration (GSA) clearance for the request for extension of OMB paperwork approval.

On March 6, 1996, OGE published an advance paperwork notice of its forthcoming request for three-year extension of paperwork approval for the SF 278 (see 61 FR 8941–8942). Just one comment, from an executive branch department, was received based on that advance notice. The department offered to provide OGE detailed comments were OGE to seek legislative changes to improve the nature and process of information collected by the SF 278 under the Ethics Act financial disclosure provisions. As OGE indicated in the advance notice, for now OGE is not proposing any changes to the existing SF 278 report form, though it is asking agencies to provide updating notices to filers of certain changes in the Ethics Act and the Paperwork Reduction Act (see the discussion below). Moreover, OGE does not intend at this time to seek any legislative changes to the Ethics Act financial disclosure provisions (indeed, the law was recently amended, not at OGE's request, to require more detailed reporting of certain higher-valued items). Therefore, OGE has determined to proceed with submission of the SF 278 as is to OMB for renewal of paperwork approval. However, OGE has also indicated that it will consider improvements to the SF 278 in the future and the commenting department's further input can take place at that time along with that of other interested agencies and the public.

As noted in the advance FR notice, OGE, as the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act (the ''Ethics Act''), is the sponsoring agency for the SF 278, the most recent edition of which is that of June 1994 (the existing paperwork clearance, for which OGE now is requesting a three-year extension, is good through the end of September 1996). The prior January 1991 edition of the SF 278 also remains usable until supplies are exhausted. In accordance with section 102 of the Ethics in Government Act, 5 U.S.C. app., 102, and OGE's implementing financial disclosure regulations at 5 CFR part 2634, the SF 278 collects pertinent financial information from certain officers and high-level employees in the executive branch for conflicts of interest review and public disclosure. The financial information collected under the statute and regulations relates to: assets and income; transactions; gifts, reimbursements and travel expenses; liabilities; agreements or arrangements; outside positions; and compensation over $5,000 paid by a source—all subject to various reporting thresholds and exclusions.

The SF 278 is completed by candidates, nominees, new entrants, incumbents and terminees of certain high-level positions in the executive branch of the Federal Government. The Office of Government Ethics, along with the agencies concerned, conducts the review of the SF 278 reports of Presidential nominees subject to Senate confirmation. This group of nominee reports forms the basis of OGE's paperwork estimates. In light of OGE's experience over the past three years (1993–1995), the estimate of the total number, on average, of such nominees' SF 278 forms expected to be filed annually at OGE by members of the public (as opposed to current Federal employees), primarily by private citizen nominees and private representatives (lawyers, accountants, brokers and bankers) of both private citizen and Federal employee nominees, remains 280. The estimated average amount of time to complete the report form, including review of the instructions, is also the same—three hours. Thus, the overall estimated annual public burden for the SF 278 for the nominee report forms processed at the Office of Government Ethics will stay at 840 hours. Moreover, OGE estimates, based on the agency ethics program questionnaire responses for 1995, that some 21,700 SF 278 report forms are filed annually at departments and agencies throughout the executive branch. Most of those executive branch filers are current Federal employees at the time they file, but certain candidates for President and Vice President, nominees, new entrants and terminees complete the form either before or after their Government service. The percentage of private citizen filers branchwide is estimated at no more than 5% to 10%, or some 1,085 to 2,160 at most.

The Office of Government Ethics is asking executive branch departments and agencies to notify filers of the SF 278 of certain recent changes in the reporting law as regards higher-category (over $1,000,000) assets, income and liabilities. In addition, OGE itself will notify concerned filers holding qualified blind trusts of a modification as to reportable trust interests. See sections 20 and 22 of the Lobbying Disclosure Act of 1995, Public Law 104- 65, which amended the Ethics in Government Act. It does not appear at this time that there will be a need to modify the gifts/reimbursement reporting thresholds, since the ''minimal value'' threshold as determined by the General Services Administration in consultation with the Secretary of State under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, is likely to remain under $250 for the next three years, 1996–1998 (the Ethics Act reporting thresholds are pegged to any increase over $250 of ''minimal value''). In the next year or two, OGE intends to begin work on an eventual successor form to the current version of the SF 278 that would reflect these recent changes as well as add express mention, on the public burden information block, of a statement pursuant to the 1995 amendments to the paperwork law to the effect that ''an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number,'' together with a parenthetical mention that such number is displayed in the upper right-hand corner of the front page of the form. Serious consideration will also be given to any other appropriate changes, including possible redesign of the form at that time. That future form may either be a modified standard form or a new OGE form and will be subject to appropriate clearances before issuance. Again, for now, OGE is not proposing to modify the SF 278 report form itself, but rather will ask that departments and agencies notify their filers of the modifications to the reporting requirements and new paperwork statement when the existing SF 278 forms are provided for completion (OGE will notify concerned filers of the changes as to qualified blind trust interests).

Based on an OGE request last year as approved by the General Services Administration, the SF 278 Public Financial Disclosure Report can now be electronically duplicated without standard form exception clearance pursuant to GSA's Federal Information Resources Management Regulation Bulletin B–3, as revised, provided that the bulletin's strict duplication standards (precisely paralleling the original paper form to the extent feasible) are complied with. Thus, departments and agencies can develop their own electronic SF 278 forms. The Office of Government Ethics also intends to develop a stand-alone electronic SF 278 form that would be made available free of charge or at cost to executive branch departments and agencies. In addition, that electronic version of the form could be placed on OGE's electronic bulletin board entitled

''The Ethics Bulletin Board System'' (TEBBS). For now, OGE notes that even with these electronic initiatives, the SF 278 reports, once completed, will still need to be printed out and signed manually. Electronic filing is not authorized at this time for the SF 278s.

Public comment is invited on each aspect of the SF 278 Public Financial Disclosure Report as set forth in this notice, including specifically views on the need for and practical utility of this collection of information, the accuracy of OGE's burden estimate, the potential for enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology). The Office of Government Ethics, in consultation with OMB, will consider all comments received in response to this notice. The comments will also become a matter of public record.

Approved: August 1, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 96–20141 Filed 8–6–96; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–18]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on August 2, 1996.

Proposed Projects

1. Case-Control Study of the Effect of Total Dietary Folate Intake on the Clinical Manifestation of Vitamin B 12 Deficiency—New—Fortification of grain products with folic acid has been recommended to increase the intake of folate by women of reproductive age in order to decrease the risk of neural tube birth defects. Fortification high enough to increase the passive consumption of folic acid to the recommended level of 400 ug/day for all women would increase the consumption by some segments of the population to well over the presumed safe upper limit of 1000 ug/day. There is concern, based on case reports, that excess folate consumption may delay the diagnosis of vitamin B 12 deficiency, especially in the elderly. Delayed diagnosis of B 12 deficiency may lead to the development of neuropsychiatric signs and symptoms, some of which may be irreversible. There is no population-based estimate of the prevalence of B 12 deficiency among the elderly, nor is there any population-based data on the frequency with which diagnosis of B 12 deficiency is complicated by folate intake. The Food and Drug Administration has postponed folate fortification pending more data on the potential risks of high levels of folate consumption for the general population.

This is a pilot study to determine the size, feasibility, cost and duration of a population-based survey; the population-based survey would estimate the prevalence of vitamin B 12 deficiency in the general population and estimate the impact of folate intake on its diagnosis. This information is needed to assess the risk that may be posed by high levels of fortification of the food supply with folate.

The proposed pilot study will seek to identify new cases of B 12 deficiency from the computerized laboratory records of a health maintenance organization, determine the nature of the clinical presentation of the cases by medical record review, and evaluate the association of folic acid intake with type of clinical presentation by dietary assessment. 70 individuals with B 12 deficiency and 70 normal controls will participate in a telephone interview about their diet and use of nutritional supplements in the year preceding the diagnosis.

Respondents	No. of respondents	Responses/respondent	Average burden/response (in hrs.)
Cases w/ B 12 deficiency	70	1	1
Normal controls	70	1	1

The total annual burden is 140.

2. Supplement to HIV/AIDS Surveillance (SHAS)—Extension—(0920–0262) There continues to be significant interest from public health, community, minority groups, and affected groups in obtaining more information on persons with HIV/AIDS infection. Since 1989, the Centers for Disease Control and Prevention (CDC), in collaboration with 12 state and local health agencies, has collected data through the national Supplemental HIV/AIDS Surveillance (SHAS) project. The objective of this project is to obtain increased descriptive information on persons with newly reported HIV and AIDS infections, including socioeconomic characteristics, risk behaviors, use of health care services, women's reproductive history and children's health, and information on disabilities. This information supplements information that is routinely collected through national HIV/AIDS surveillance. The information gained from SHAS is used to improve our understanding of minority issues related to the epidemic of HIV, target educational efforts to prevent transmission, and improve services for persons with HIV disease.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Georgia	409	1	0.75
California	325	1	.75
Michigan	164	1	.50
New Mexico	83	1	.75
Arizona	283	1	.75
Colorado	168	1	.75
Connecticut	213	1	.75
Delaware	202	1	.50
Florida	261	1	.50
So. Carolina	206	1	.50
New Jersey	224	1	.75
Washington	146	1	.75

The total annual is 1,806.

3. Examination of Barriers to Participant Compliance in a Flexible Sigmoidoscopy Screening Program, Imperial Cancer Research Fund, United Kingdom—New—As part of an existing screening program, there is significant project savings in this initiative. Colorectal cancer accounts for approximately 9% of all newly diagnosed cancer worldwide. Of all cancer mortality in industrialized nations, colorectal cancer is second only to lung cancer, with the U.S. and Great Britain among the highest in this category. Despite increasing evidence that the early diagnosis of colorectal

cancer through screening examination can significantly prevent and/or reduce the burden of mortality, morbidity, and associated costs, rates of participation in screening remain extremely poor. This study, involving investigators at the Imperial Cancer Research Fund (ICRF) of Great Britain, seeks to identify barriers associated with low compliance in a mass, population-based colorectal cancer screening trial utilizing flexible sigmoidoscopy.

The ICRF has a long history of conducting important mass screening trials relative to cancer early detection and their investigators are considered international experts in colorectal cancer screening. Because the ICRF already has an ongoing population-based colorectal screening program, significant project start-up and infrastructure cost savings have been incorporated into this proposal. Subjects will include randomly selected adults age 55–64 with no known history of colorectal cancer in Glasgow.

The study involves assessment of demographic, environmental, and psychosocial factors which may limit screening participation via surveys and interviews. Informed consent will be obtained and a complete explanation of all medical procedures will be given.

Phase I will involve initial identification, survey query, and solicitation for screening. Phase II will involve telephone and personal interviews, and Phase III will involve final data analysis.

Participation in this study is voluntary and subsequent screening, follow-up and treatment, if indicated, will be provided at no cost to participants. Informed consent will be obtained where appropriate and oversight will be provided by federal and local institutional review.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Population-based sample of adults aged 55–64	6,000	1	.016
Phase III	400	1	.0330

The total burden hours is 1133.

4. Cholera and Vibrio Illness Investigation Report Form—(0920–0322)—Extension—The purpose of the Cholera and other Vibrio Illness Investigation Report Form is to collect information on illness occurring as a result of infection with *Vibrio* species. Vibrios are important pathogens in the United States, and primary septicemia, gastroenteritis, and wound infections have been associated with various species. In particular, gastroenteritis and primary septicemia have been associated with the consumption of undercooked shellfish, and particularly with raw Gulf Coast oysters. Associations have also been linked to wound infections with exposure of broken skin to seawater. Most importantly, *Vibrio cholera* 01 is the organism responsible for cholera, a severe, dehydrating diarrheal illness. Although infections with *Vibrio cholera* 01 are notifiable in all states, an official report form for this illness did not previously exist. The Vibrio Illness Investigation Report Form is used to record information on all *Vibrio*-related illness, as well as more detailed information on cholera illness, which is currently a reportable disease in all states. The form has a separate optional Seafood Investigation section to be completed when applicable. The form provides a consolidated, systematic method by which health departments can report such information, which is then used to gain a better understanding of the incidence, etiology, and epidemiology of all *Vibrio*-related illness occurring in the United States.

Data columns have been added to, and comments space reduced on, the form to facilitate data entry and reduce the burden. No change in the frequency of reporting has occurred or is projected.

Most respondents are epidemiologists or nurses in the local health department, but in some instances infection control nurses or physicians might complete the form.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Local health department staff	90	1	0.33
Health care facility staff	45	1	0.33
Physicians ...	15	1	0.33

The total annual burden is 50.

5. Metropolitan Atlanta Birth Defect and Risk Factor Surveillance Program—(0920–0010)—Reinstatement—Birth defects are the leading cause of infant mortality in the United States, and they cause a great deal of lifelong morbidity. One in 33 infants are born with a major birth defect. Occasionally, medications of environmental agents have been recognized as causes of birth defects, an example being the drug thalidomide in the early 1960s. Unless surveillance of trends and unusual patterns in birth defects is undertaken, new ''thalidomide'' may be introduced and fail to be recognized in a timely fashion. The Metropolitan Atlanta Congenital Defects Program (MACDP) has conducted such surveillance since 1967 using existing hospital and clinic medical records.

The causes of the majority of birth defects, however, are not known. Birth Defects Risk Factor Surveillance (BDRFS) (which began in January 1993) attempts to find the causes of a selected subset of major anomalies, using an ongoing case-control study approach. BDRFS draws its cases from the data collected by MACDP and conducts in-depth interviews with the parents of affected infants and a comparison set of randomly selected parents of unaffected infants.

The objectives of these two activities are: (1) To conduct surveillance for congenital anomalies in metropolitan Atlanta; (2) to gain new information on causes of birth defects; (3) to further evaluate factors already suspected of influencing the occurrence of birth defects; and (4) to develop and test methods (including the use of biologic markers of exposure and susceptibility) in birth defect surveillance that would be exportable to other birth defects surveillance systems.

Respondents	Number of respondents	Number of responses/respondents	Average burden/response (in hrs.)
Special (ad hoc) studies interview	300	1	1
BDRFS case/control interview	500	1	1
Biologic specimen collection w/wo clinical exam	800	1	0.60

The total annual burden is 1280.

Dated: July 31, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–20070 Filed 8–6–96; 8:45 am]

BILLING CODE 4163–18–P

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Occupational Radiation and Energy-Related Health Research Grants, Program Announcement 617: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Disease, Disability, and Injury Prevention and Control SEP: Occupational Radiation and Energy-Related Health Research Grants, Program Announcement 617.

Time and Date: 8 a.m.-5 p.m., September 4, 1996.

Place: Drawbridge Inn, Meeting Room-Bedford, I–75 at Buttermilk Pike, Ft. Mitchell, Kentucky 41017.

Status: Closed.

Matters to be Discussed: The meeting will included the review, discussion, and evaluation of applications received in response to Program Announcement 617.

The meeting will be closed to the public in accordance with provisions set forth in 5 U.S.C. Section 552b(c) (4) and (6), and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Contact Person for More Information: Walter M. Haag, MPH, Health Science Administrator, Division of Physical Sciences and Engineering, national Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4433.

Dated: July 31, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–20071 Filed 8–6–96; 8:45 am]

BILLING CODE 4163–18–M

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Services Administration's Federal Advisory Committees have been filed with the Library of Congress: Health Professions and Nurse Education, Special Emphasis Panel.

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, S.E., Washington, D. C. Copies may be obtained from: Ms. Sherry Whipple, Program Analyst, Peer Review Branch, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6874.

Dated: August 1, 1996.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 96–20021 Filed 8–6–96; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, September 5, 1996, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892.

The Council meeting will be open to the public on September 5, from 8:30 a.m. to approximately 12:00 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., sec. 10(d) of Pub. L. 92–463, the Council meeting will be closed to the public from approximately 1:00 p.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Rockledge Building (RKL2), Room 7100, National Institutes of Health, Bethesda, Maryland 20892, (301) 435–0260, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: July 31, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–20062 Filed 8–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: HERITAGE: Genetics, Response to Exercise and Risk Factors

Date: August 28–29, 1996.

Time: 7:30 p.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anthony M. Coelho, Jr., Ph.D., Two Rockledge Center, Room 7182, MSC 7924, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0277.

Purpose/Agenda: To review and evaluate grant applications.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Simulated Microgravity and Cardiovascular, Pulmonary, and Hematologic Research.

Date: October 11, 1996.

Time: 8:00 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jeffrey H. Hurst, Ph.D., Two Rockledge Center, Room 7208, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0303.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93–837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–20144 Filed 8–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health; National Institute of Diabetes and Digestive and Kidney Diseases

Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on September 18–19, 1996. The meeting of the full Council will be open to the public on September 18, from 8:30 a.m. to 12:00 p.m. in Conference Room 10, Building 31C, National Institutes of Health, Bethesda, Maryland, to discuss administrative issues relating to Council business and special reports. The following subcommittee meetings will be open to the public September 18 from 1:00 p.m. to 2:00 p.m.: Diabetes, Endocrine and Metabolic Diseases Subcommittee meeting will be held in Conference Room 10, Building 31C; Digestive Diseases and Nutrition Subcommittee meeting will be held in Conference Room 7, Building 31C; and Kidney, Urologic and Hematologic Diseases Subcommittee meeting will be held in Conference Room 9, Building 31C. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meetings of the subcommittees and full Council will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on September 18, form 2:00 p.m. to 5:00 p.m.: Diabetes, Endocrine and Metabolic Diseases Subcommittee; Digestive Diseases and Nutrition Subcommittee; and Kidney, Urologic and Hematologic Diseases Subcommittee. The full Council will meet in closed session on September 19 from 8:30 a.m. to 10:00 a.m. in Conference Room 10, Building 31C. These deliberations, whether held in a subcommittee or in the full council, could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A final open session of the full Council will be held from 10:00 a.m. to 12:00 p.m. to hear reports from the Division Directors.

For any further information, and for individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Natcher Building, Room 6AS–25C, Bethesda, Maryland 20892, (301) 594–8834, in advance of the meeting.

In addition, upon request, a summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 45, Room 6AS–37J, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–8892.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: July 31, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–20061 Filed 8–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: August 5–August 6, 1996.

Time: 5 p.m.

Place: Washington Marriott Hotel, 1221 22nd Street, N.W., Washington, DC 20037.

Contact Person: Jean G. Noronha, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville MD 20857, Telephone: 301, 443–6470.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: July 31, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–20057 Filed 8–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on September 26–27, 1996. Meetings of the Council, NAAIDC Allergy and Immunology Subcommittee, NAAIDC Microbiology and Infectious Diseases Subcommittee and the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be held at the National Institutes of Health, Building 31C, Bethesda, Maryland.

The meeting of the full Council will be open to the public on September 26 in Conference Room 6 from approximately 1 p.m. until 3:30 p.m. for opening remarks of the Institute Director, discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include a report on the impact of managed care on clinical research, an overview and discussion of topics discussed at the May meeting of the AIDS Research Advisory Committee, NIAID, and the annual report of the Division of Intramural Research.

On September 27 the meetings of the NAAIDC Allergy and Immunology Subcommittee and NAAIDC Microbiology and Infectious Diseases Subcommittee will be open to the public from 8:30 a.m. until adjournment. The subcommittees will meet in Building 31C, conference room 8 and 7 respectively. The meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be open to the public from 8 a.m. until adjournment, on September 27. The subcommittee will meet in Building 31C, conference room 6.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L.

92–463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately four hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:30 a.m. until approximately 1 p.m. on September 26, in conference rooms 6, 8 and 7 respectively. The meeting of the full Council will be closed from 3:30 p.m. until recess on September 26 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. John J. McGowan, Director, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 3C20, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone 301–496–7291, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855 Immunology, Allergic and Immunologic Diseases Research, 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: July 31, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–20059 Filed 8–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of Panel: National Institute on Aging Special Emphasis Panel.

Dates of Meeting: September 16–17, 1996.

Times of Meeting: September 16—7:00 to 11:00 p.m.; September 17—8:00 a.m. to 5:00 p.m.

Place of Meeting: Brigham and Woman's Hospital, Boston, Massachusetts.

Purpose/Agenda: To review a grant application.

Contact Person: Louise L. Hsu, Ph.D., Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of Panel: National Institute on Aging Special Emphasis Panel.

Date of Meeting: October 8, 1996.

Time of Meeting: 8:00 a.m. to 5:00 p.m.

Place of Meeting: Case Western Reserve University, Cleveland, Ohio.

Purpose/Agenda: To review a grant application.

Contact Person: Arthur D. Schaerdel, DVM, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of Panel: National Institute on Aging Special Emphasis Panel.

Date of Meeting: October 10, 1996.

Time of Meeting: 8:00 a.m. to 5:00 p.m.

Place of Meeting: Rush Presbyterian—St. Luke's Medical Center, Chicago, Illinois.

Purpose/Agenda: To review a grant application.

Contact Person: Arthur D. Schaerdel, DVM, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of Panel: National Institute on Aging Special Emphasis Panel.

Dates of Meeting: October 21–22, 1996.

Times of Meeting: October 21—7:00 to 11:00 p.m.; October 22—8:00 a.m. to 5:00 p.m.

Place of Meeting: Case Western Reserve University, Cleveland, Ohio.

Purpose/Agenda: To review a grant application.

Contact Person: Louise L. Hsu, Ph.D., Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: July 31, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–20060 Filed 8–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Mental Health Council of the National Institute of Mental Health for September 1996.

The meeting will be open to the public, as indicated, for discussion of NIMH policy issues and will include current administrative, legislative, and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named below in advance of the meeting.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, a portion of the Council will be closed to the public as indicated below for the review, discussion and evaluation of individual grant applications. These applications, evaluations, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301, 443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the contact person indicated.

Name of Committee: National Advisory Mental Health Council.

Date: September 16–17, 1996.

Place:

September 16—Wilson Hall, Building 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892

September 17—Conference Rooms D and E, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Open: September 16, 1 p.m. to 5 p.m.

Closed: September 17, 9 a.m. to adjournment.

Contact Person: Carolyn Strete, Ph.D., Executive Secretary, Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301, 443–3367.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: July 31, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–20063 Filed 8–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on September 19–20, Building 31, Conference Room 6, Bethesda, Maryland. This meeting will be open to the public from 11 a.m. to 6 p.m. on September 19, and from 8:30 a.m. to 10:30 a.m. on September 20, for the discussion of program policies and issues, opening remarks, report of the Acting Director, NIGMS, and other business of Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 19 from 8:30 a.m. to 11 a.m., and on September 20, from 10:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AS–43H, Bethesda, Maryland 20892, telephone: 301–496–7301, FAX 301–402–0224, will provide a summary of the meeting, and a roster of Council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Dieffenbach in advance of the meeting. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Natcher Building, Room 2AN–32C, Bethesda, Maryland 20892, telephone: 301–594–4499 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS]; Special Programs, 93.960)

Dated: July 31, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–20064 Filed 8–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meeting: AIDS Research Advisory Committee, NIAID

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on September 27, 1996 in Conference Room 6, Building 31C on the campus of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 8:00 a.m. until adjournment. The AIDS Research Advisory Committee (ARAC) advises and makes recommendations to the Director, National Institute of Allergy and Infectious Diseases, on all aspects of research on HIV and AIDS related to the mission of the Division of AIDS (DAIDS).

The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress. Attendance by the public will be limited to space available.

Ms. Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Solar Building, Room 2A21, telephone 301–496–0545, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Siskind in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: July 31, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–20065 Filed 8–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meetings of the following National Institute of Mental Health Special Emphasis Panels.

Name of Committee: National Institute of Mental Health Special Emphasis Panel (Telephone Conference Call).

Date: August 15, 1996.

Time: 1:30 p.m.

Place: Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, MD 20857.

Agenda: To review proposals submitted in response to the NIMH Request for Proposals: National Cell Repository.

Contact Person: Michael J. Moody, Contracts Review Coordinator, Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–3367.

Name of Committee: National Institute of Mental Health Special Emphasis Panel (Telephone Conference Call).

Date: August 20, 1996.

Time: 10 a.m.

Place: Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, MD 20857.

Agenda: To review proposals submitted in response to the NIMH Request for Proposals: Research Units on Pediatric Psychopharmacology.

Contact Person: Michael J. Moody, Contracts Review Coordinator, Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–3367.

These meetings will be closed in accordance with the provisions set forth in secs. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle. (Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: July 31, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–20066 Filed 8–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of Meeting of National Advisory Environmental Health Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the

National Advisory Environmental Health Sciences Council, September 16–17, 1996, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on September 16 from 8:30 a.m. to approximately 3:30 p.m. for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 16 from approximately 3:30 p.m. to recess and from 9 a.m. to adjournment on September 17, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Anne Sassaman, Director, Division of Extramural Research and Training, & Executive Secretary, National Advisory Environmental Health Sciences Council, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: July 31, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–20067 Filed 8–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the National Institute of Neurological Disorders and Stroke (NINDS).

The National Advisory Neurological Disorders and Stroke Council and its subcommittee meetings will be open to the public as indicated below. Attendance by the public will be limited to space available.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary or the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed for the meeting.

Name of Committee: The Planning Subcommittee of the National Advisory Neurological Disorders and Stroke Council.
Date: September 11, 1996.
Place: National Institutes of Health, Building 31, Conference Room 8A28, 9000 Rockville Pike, Bethesda, MD 20892.
Closed: 1:30 p.m.—recess.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.
Dates: September 12–13, 1996.
Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.
Open: September 12, 8:30 a.m.—recess.
Agenda: A report by the Director, NINDS; a report by the Director, Division of Extramural Activities, NINDS; and scientific presentation by an NINDS grantee.
Closed: September 13, 8:30 a.m.—adjournment.
Executive Secretary: Constance W. Atwell, Ph. D., Director, Division of Extramural Activities, NINDS, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9248.

The following meetings will be totally closed to review and evaluate grant applications:

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Subcommittee B.
Date: October 17–19, 1996.
Time: October 17, 7:30 p.m.–recess; October 18, 8:00 a.m.–recess; October 19, 8:00 a.m.–adjournment.
Place: The Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Dr. Paul Sheehy, Scientific Review Administrator, National Institutes of Health, Federal Building, Room 9C–10, Bethesda, MD 20892, (301) 496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Subcommittee A.
Date: October 23–25, 1996.
Time: October 23, 7:30 p.m.–recess; October 24, 8:30 a.m.–recess; October 25, 8:30 a.m.–adjournment.
Place: Holiday Inn Bethesda, 8129 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Dr. Katherine Woodbury, Scientific Review Administrator, National Institutes of Health, Federal Building, Room 9C–10, Bethesda, MD 20892, (301) 496–9223.

Name of Committee: Training Grant and Career Development Review Committee.
Date: November 13–15, 1996.
Time: November 13, 8:30 a.m.–recess; November 14, 8:00 a.m.–recess; November 15, 8:00 a.m.–adjournment.
Place: The Hampshire Hotel, 1310 New Hampshire Ave., NW., Washington, DC 20036.
Contact Person: Dr. Alfred W. Gordon, Scientific Review Administrator, National Institutes of Health, Federal Building, Room 9C–10, Bethesda, MD 20892, (301) 496–9223.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 98.854, Biological Basis Research in the Neurosciences)

Dated: July 31, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–20068 Filed 8–6–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Microbiological and Immunological Sciences.
Date: August 7, 1996.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4190, Telephone Conference.
Contact Person: Dr. Garrett Keefer, Scientific Review Administrator, 6701 Rockledge Drive, Room 4190, Bethesda, Maryland 20892, (301) 435–1152.

Name of SEP: Clinical Sciences.
Date: August 12, 1996.
Time: 8:30 a.m.
Place: Marriott Crystal Gateway, Crystal City, VA.
Contact Person: Dr. Terry Hoffeld, Scientific Review Administrator, 6701 Rockledge Drive, Room 4116, Bethesda, Maryland 20892, (301) 435–1781.

This notice is being published less than 15 days prior to the above meetings due to the

urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: July 31, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–20058 Filed 8–6–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: August 13, 1996.

Time: 8:30 a.m.

Place: NIH, Rockledge 2, Room 5186, Telephone Conference.

Contact Person: Dr. Kenneth Newrock, Scientific Review Administrator, 6701 Rockledge Drive, Room 5186, Bethesda, Maryland 20892, (301) 435–1252.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 27, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4178, Telephone Conference.

Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

Name of SEP: Chemistry and Related Sciences.

Date: August 28, 1996.

Time: 12:00 p.m.

Place: NIH, Rockledge 2, Room 4176, Telephone Conference.

Contact Person: Dr. Mike Radtke, Scientific Review Administrator, 6701 Rockledge Drive, Room 4176, Bethesda, Maryland 20892, (301) 435–1728.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 29, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4178, Telephone Conference.

Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–20143 Filed 8–6–96; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Substance Abuse and Mental Health Services Administration's Special Emphasis Panel I, Advisory Committee for Women's Services, and Drug Testing Advisory Board in September 1996.

Substantive program information may be obtained from the individual named as Contact for each of the meetings listed below.

The meeting of the Special Emphasis Panel I (SEP I) will include the review, discussion and evaluation of individual grant applications. The discussion could reveal personal information concerning individuals associated with the applications. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in title 5 U.S.C. 552b(c)(6) and 6 U.S.C. App.2, § 10(d).

A summary of the meeting and a roster of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–4783.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Date(s): September 3–6, 1996.

Place: DoubleTree Hotel, Montrose Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Closed: September 3–5, 1996, 8:30 a.m.–5:00 p.m.; September 6, 1996, 8:30 a.m.–Adjournment.

Panel: State Health Reform Grants (SM96–02).

Contact: Ferdinand Hui, Ph.D., Room 17–89, Parklawn Building, Telephone: (301) 443–9912 and FAX: (301) 443–3437.

The meeting of the Advisory Committee for Women's Services will include a discussion of and update on policy and program issues relating to women's substance abuse and mental health service needs at SAMHSA, including the SAMHSA fiscal year 1997 budget; the SAMHSA reorganization; FY 97 Knowledge Development and Application Grants; Action Planning; the Girl Power! Public Education Campaign; the impact of FY 96 Discontinuations on programs that serve women and children; and future women's policy and program directions at SAMHSA.

A summary of the meeting and/or a roster of committee members may be obtained from: Pamela J. McDonnell, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, SAMHSA, Parklawn Building, Room 13–99, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–5184.

Committee Name: Advisory Committee for Women's Services.

Meeting Date(s): September 9, 1996.

Place: Montgomery/Democracy Room, Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Open: September 9, 8:30 a.m. to 5:00 p.m.

Contact: Pamela J. McDonnell, Room 13–99, Parklawn Building, Telephone: (301) 443–5184.

The meeting of the Drug Testing Advisory Board of the Center for Substance Abuse Prevention will include an open portion with a roll call, general announcements, and a discussion of various program, procedural, and technical issues. Public comments are welcome during the open session. Please communicate with the individual listed as Contact below for guidance.

The meeting will also include the review of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c) (2), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

A summary of this meeting and roster of Board members may be obtained from: Ms. Vera L. Jones, CSAP Committee Management Officer, Rockwall II, Room 7A–140, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–9542.

Committee Name: Drug Testing Advisory Board (DTAB).

Meeting Date(s): September 18, 1996.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, Maryland 20857.

Open: September 18, 1996, 8:30 a.m.–10:00 a.m.

Closed: September 18, 1996, 10:00 a.m.–4:00 p.m.

Contact: Donna M. Bush, Ph.D., Executive Secretary, Telephone: (301) 443–6014 and FAX: (301) 443–3031.

Dated: August 1, 1996.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 96–20022 Filed 8–6–96; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Santa Ana Pueblo Liquor Code

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. § 1161. I certify that by Resolution No. 96–R–08, the Santa Ana Pueblo Liquor Code was duly adopted by the Tribal Council of the Pueblo of Santa Ana on May 2. 1995. The Code provides for the regulation of the activities of the regulation, manufacture, distribution, possession, sale and consumption of liquor on the Santa Ana Pueblo Indian Reservation, under the jurisdiction of the Pueblo of Santa Ana, and is in conformity with the laws of the State of New Mexico.

DATES: This Code is effective as of August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street N.W., MS 4603–MIB, Washington, D.C. 20240–4001; telephone (202) 208–4401.

SUPPLEMENTARY INFORMATION: The Santa Ana Pueblo Liquor Code is to read as follows:

Title 10: Licensing & Regulation

Chapter One: Liquor Code

Subchapter One: General Provisions

Section 101: Findings

The Tribal Council finds as follows:

A. The introduction, possession and sale of alcoholic beverages on the Santa Ana Indian Reservation has, for a long time, been clearly recognized as a matter of special concern to the Pueblo and its members and to the United States; and

B. Under federal law and New Mexico state law, and as a matter of inherent Tribal sovereignty, the question of when and to what extent alcoholic beverages may be introduced into and sold or consumed within the Santa Ana Indian Reservation is to be decided by the governing body of the Tribe; and

C. It is desirable that the Tribal Council legislate comprehensively on the subject of the sale and possession of alcoholic beverages within the Santa Ana Indian Reservation, both to establish a consistent and reasonable Tribal policy on this important subject, as well as to facilitate economic development projects within the Santa Ana Indian Reservation that may involve outlets for the sale and consumption of alcoholic beverages; and

D. It is the policy of the Tribal Council that the introduction, sale and consumption of alcoholic beverages within the Santa Ana Indian Reservation be carefully regulated so as to protect the public health, safety and welfare, and that licensees be made fully accountable for violations of conditions of their licenses and the consequences thereof.

Section 102: Definitions

As used in this Chapter, the following words shall have the following meanings:

A. ''Pueblo'' or ''Tribe'' means the Pueblo of Santa Ana.

B. ''Council'' means the Tribal Council of the Pueblo of Santa Ana.

C. ''Governor'' means the Governor of the Pueblo of Santa Ana.

D. ''Tribal Administrator'' means the Tribal Administrator of the Pueblo of Santa Ana.

E. ''Person'' means any natural person, partnership, corporation, joint venture, association, or other legal entity.

F. ''Sale'' or ''sell'' means any exchange, barter, or other transfer of goods from one person to another for commercial purposes, whether with or without consideration.

G. ''Liquor'' or ''Alcoholic Beverage'' includes the four varieties of liquor commonly referred to as alcohol, spirits, wine and beer, and all fermented, spirituous, vinous or malt liquors or combinations thereof, mixed liquor, any part of which is fermented, spirituous, vinous, or malt liquor, or any otherwise intoxicating liquid, including every liquid or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer and intended for oral consumption.

H. ''Licensee'' means a person or entity that has been issued a license to sell alcoholic beverages on the licensed premises under the provision of this Liquor Code.

I. ''Licensed Premises'' means the location within the Santa Ana Indian Reservation at which a licensee is permitted to sell and allow the consumption of alcoholic beverages, and may, if requested by the applicant and approved by the Governor, include any related or associated facilities under the control of the licensee, or within which the licensee is otherwise authorized to conduct business (but subject to any conditions or limitations as to sales within such area that may be imposed by the Governor in issuance of the license).

J. ''Santa Ana Indian Reservation'' means all lands within the exterior boundaries of the Santa Ana Indian Reservation, all lands within the exterior boundaries of the El Ranchito Grant and the Santa Ana Pueblo Grant, and all other lands owned by the Pueblo subject to federal law restrictions on alienation or held by the United States for the use and benefit of the Pueblo.

K. ''Development Area'' means those lands within the Santa Ana Indian Reservation that are situated west of the Rio Grande and that abut State Road 44, State Road 528 or the Jemez Canyon Dam Road, but does not include any lands within one mile of the intersection of State Road 44 and the turnoff to the village of Tamaya (provided however, that if such term is more specifically defined in a planning or zoning statute or ordinance adopted by the Tribal Council, or in any regulations issued under the authority of any such duly adopted planning or zoning statute or ordinance, such definition shall supersede and control the definition of such term set forth herein).

L. ''Special Event'' means a bona fide special occasion such as a fair, fiesta, show, tournament, contest, meeting, picnic or similar event within the Development Area, sponsored by an established business or organization, lasting no more than three days. A special event may be open to the public or to a designated group, and it may be a one-time event or periodic, provided, however, that such events held more than four times a year by the same business or organization may not be deemed special events for purposes of this Liquor Code, in the discretion of the Governor.

M. ''Liquor Code'' means the Santa Ana Pueblo Liquor Code, this Chapter.

Section 103: Sovereign Immunity Preserved

Nothing in the Liquor Code shall be construed as a waiver or limitation of the sovereign immunity of the Pueblo.

Section 104: Initial Compliance

No person shall be disqualified from being issued a license under the

provisions of this Liquor Code, or shall be found to have violated any provision of this Chapter, solely because such person, having been duly authorized to engage in the sale of alcoholic beverages within the Santa Ana Indian Reservation under the law as it existed prior to enactment of this Liquor Code, continues to engage in such business without a license issued under the provisions of this Liquor Code after the effective date hereof, so long as such person, within 90 days after such effective date (or within 30 days after receiving written notice from the Pueblo of the enactment of the Liquor Code, whichever is later) submits an application for such license in compliance with the provisions of this Liquor Code, and a license is thereafter issued in due course; provided, however, that upon the issuance of a license under the provisions of this Liquor Code to any person or entity, or upon the rejection of an application for such license by any person or entity, no license issued by the State of New Mexico or issued under the provisions of any prior law of the Pueblo that is held by such person or entity, or that purports to authorize the possession, sale or consumption of alcoholic beverages on premises covered by a license issued (or a license application rejected) under the provisions of this Liquor Code, shall have any further validity or effect within the Santa Ana Indian Reservation.

Section 105: Severability

In the event any provision of this Liquor Code is held invalid or unenforceable by any court of competent jurisdiction, the remainder of the Code shall continue in full force and effect, notwithstanding the invalidity or unenforceability of such provision, to the fullest extent practicable.

Subchapter Two: Sale, Possession And Consumption Of Alcoholic Beverages

Section 121: Prohibition

The sale, introduction for sale, purchase, or other dealing in alcoholic beverages, except as is specifically authorized by the Liquor Code, is prohibited within the Santa Ana Indian Reservation.

Section 122: Possession for Personal Use

Possession of alcoholic beverages for personal use shall be lawful within the Santa Ana Indian Reservation only if such alcoholic beverages were lawfully purchased from an establishment duly licensed to sell such beverages, whether on or off the Santa Ana Indian Reservation, and are possessed by a person or persons 21 years of age or older. Such possession is otherwise prohibited.

Section 123: Transportation Through Reservation Not Affected

Nothing herein shall pertain to the otherwise lawful transportation of alcoholic beverages through the Santa Ana Indian Reservation by persons remaining upon public highways (or other paved public facilities for motor vehicles) and where such beverages are not delivered, sold or offered for sale to anyone within the Santa Ana Indian Reservation.

Section 124: Requirement of Pueblo License

No person shall sell any alcoholic beverage within the Santa Ana Indian Reservation, or offer any such beverage for sale, unless such person holds a license issued by the Pueblo under the provisions of this Chapter.

Section 125: All Sales for Personal Use

No person licensed to sell alcoholic beverages within the Santa Ana Indian Reservation shall sell any such beverage for resale, but all such sales shall be for the personal use of the purchaser. Nothing herein shall prohibit a duly licensed wholesale dealer in alcoholic beverages from selling and delivering such beverages to properly licensed retailers within the Santa Ana Indian Reservation, so long as such sales and deliveries are otherwise in conformity with the laws of the State of New Mexico and this Liquor Code.

Section 126: Package Sales and Sales of Liquor by the Drink Permitted

Sales of alcoholic beverages on the Santa Ana Indian Reservation may be in package form or for consumption on the premises, or both, so long as the seller is properly licensed by the Pueblo to make sales of that type. No seller of alcoholic beverages shall permit any person to bring onto premises where liquor by the drink is authorized to be sold any alcoholic beverages purchased elsewhere, unless such person is otherwise licensed to possess or distribute such beverages on such premises.

Section 127: No Sales to Minors

No alcoholic beverages may be sold within the Santa Ana Indian Reservation to persons under the age of 21 years.

Section 128: Hours and Days of Sale

A. Alcoholic beverages may be sold, offered for sale, delivered or consumed on licensed premises within the Santa Ana Indian Reservation, other than at gaming establishments, only during the following days and hours:

1. On Mondays through Saturdays, between the hours of 10:00 a.m. and 12:00 midnight.

2. On Sundays, from 10:00 a.m. until midnight.

B. At any gaming establishment licensed as such by the Santa Ana Gaming Regulatory Commission, that is also a licensed premises within the meaning of this Liquor Code, alcoholic beverages may be sold, offered for sale, delivered or consumed from 10:00 a.m. until 2:00 a.m. on Mondays through Saturdays (provided, however, that after midnight such sales shall only be for consumption on the premises, regardless what type of license is held by the gaming establishment), and on Sundays from 12:00 noon until midnight.

Section 129: Sales on Election Day

No sales of alcoholic beverages shall be permitted to any person within the Santa Ana Indian Reservation on any Tribal, State or Federal election day, until one (1) hour after the polls are closed.

Section 130: Other Prohibitions on Sales

The Tribal Council may, by duly enacted resolution, establish other days on which or times at which sales or consumption of alcoholic beverages are not permitted within the Santa Ana Indian Reservation. The Council shall give notice of any such enactment promptly to all licensees within the Santa Ana Indian Reservation. In addition, the Governor of the Pueblo may, in the event of a bona fide emergency, and by written order, prohibit the sale of any alcoholic beverages within the Santa Ana Indian Reservation for a period of time not to exceed 48 hours. The Governor shall give prompt notice of such emergency order to all licensees within the Santa Ana Indian Reservation. No such emergency order may extend beyond 48 hours, unless during that time the Tribal Council meets and determines that the emergency requires a further exension of such order.

Section 131: Location of Sales

No person licensed to sell alcoholic beverages within the Santa Ana Indian Reservation shall make such sales except at the licensed premises specifically designated in such license. No person holding a premises license shall permit consumption of alcoholic

beverages purchased from such licensee to occur off of the licensed premises.

Section 132: Sales To Be Made by Adults

No person shall take any order, make any delivery, or accept payment for any sale of alcoholic beverages within the Santa Ana Indian Reservation, or otherwise have any direct involvement in any such sale, who is less than 21 years of age.

Section 133: All Sales Cash

No licensee shall make any sale of any alcoholic beverages within the Santa Ana Indian Reservation without receiving payment therefor by cash, check or credit card at or about the time the sale is made; provided, that nothing herein shall preclude a licensee from receiving a delivery of alcoholic beverages from a duly authorized wholesaler where arrangements have been made to pay for such delivery at a different time; and provided further that nothing herein shall preclude a licensee from allowing a customer to purchase more than one alcoholic beverage in sequence, and to pay for all such purchases at the conclusion thereof, so long as payment is made in full before the customer has left the licensed premises; and provided further that nothing herein shall prevent a licensee from distributing alcoholic beverages to customers without charge, so long as such distribution is not otherwise in violation of any provision of this Liquor Code.

Subchapter Three: Issuance of Licenses

Section 151: Requirement of License

Any person wishing to sell, offer for sale, store or possess for commercial purposes, or maintain premises for the consumption of alcoholic beverages within the Santa Ana Indian Reservation, must be duly licensed under the provisions of this Liquor Code.

Section 152: Classes of Licenses

The following types or classes of licenses for the sale or distribution of alcoholic beverages within the Santa Ana Indian Reservation shall be permitted:

A. Package license, which shall authorize the licensee to store, possess, sell and offer for sale alcoholic beverages, for consumption only off the licensed premises.

B. Premises license, which shall authorize the licensee to store, possess and sell alcoholic beverages for consumption on the licensed premises only, and to permit such consumption on the licensed premises only.

C. Special event license, which shall authorize the licensee to possess, distribute, sell and offer for sale alcoholic beverages for consumption only on the licensed premises, and to permit such consumption, but only for a bona fide special event, and only during the period or periods specified in such license, which period or periods shall be limited to the periods during which the special event is occurring and from beginning to end shall not exceed 72 hours.

Section 153: Qualifications for License

A. No person shall be entitled to be issued a license under the provisions of this Liquor Code who has previously been the subject of any proceeding resulting in the revocation of any license for the sale of alcoholic beverages issued by the Pueblo or by any state or other jurisdiction, or who has been convicted of any felony in any jurisdiction involving theft, corruption or embezzlement, or who has not at the time the application for license is submitted attained the age of 21 years, or who is otherwise determined by the Pueblo to be unfit to be licensed to sell alcoholic beverages, or whose spouse is a person not qualified to hold a license under the provisions of this section.

B. No partnership or corporation shall be entitled to be issued a license under the provisions of this Liquor Code if any individual occupying any management or supervisory position within such corporation or partnership, or who sits on the management committee or board of directors or trustees thereof, or who holds or controls a financial interest of ten percent or more in such partnership or corporation, is a person who would not be entitled to be issued a license under the provisions of this section.

C. No person shall be entitled to be issued a package or premises license hereunder unless such person has, by virtue of an approved lease or other valid interest in lands within the Santa Ana Indian Reservation, lawful entitlement to engage in a business within the Development Area with which such license would be compatible, and can demonstrate that such person is otherwise capable of complying with all of the requirements imposed on licensees by this Liquor Code.

D. No application for a package or premises license shall be issued for any licensed premises outside of the Development Area.

E. Notwithstanding anything in this section to the contrary, the Pueblo and its agencies, programs and enterprises shall be entitled to be issued licenses hereunder in appropriate circumstances, provided that all other provisions of this Liquor Code are complied with.

Section 154: Package and Premises License Application; Procedure; Fees

A. Every person seeking a package or premises license under the provisions of this Liquor Code (other than the Pueblo or any of its agencies, programs or enterprises) shall submit to the Tribal Administrator a written application, under oath, in the form prescribed by and containing the information required by this section.

B. If the applicant is a natural person, the application shall contain, at a minimum, all of the following information:

1. The full legal name of the applicant, plus any other names under which the applicant has been known or done business during the previous 20 years, and the applicant's date and place of birth, as shown by a certified copy of the applicant's birth certificate.

2. The applicant's current legal residence address and business address, if any, and every residence address that the applicant has maintained during the previous ten years, with the dates during which each such address was current.

3. The trade name, business address and description of every business in which the applicant has engaged or had any interest (other than stock ownership or partnership interest amounting to less than five percent of total capital) during the previous ten years, and the dates during which the applicant engaged in or held an interest in any such business.

4. A listing of every other jurisdiction in which the applicant has ever applied for a license to sell or distribute alcoholic beverages, the date on which each such application was filed, the name of the regulatory agency with which the application was filed, the action taken on each such application, and if any such license was issued, the dates during which it remained in effect, and as to each such license a statement whether any action was ever taken by the regulatory body to suspend or revoke such license, with full dates and details of any such incident.

5. A listing of every crime with which the applicant has ever been charged, other than routine traffic offenses (but including any charge of driving while intoxicated or the like), giving as to each the date on which the charge was made, the location, the jurisdiction, the court in which the matter was heard, and the outcome or ultimate disposition thereof.

6. The name and address of every person or entity holding any security interest in any of the assets of the business to be conducted by the

applicant, or in any of the proceeds of such business.

7. A detailed plat of the business premises within the Development Area, including the floor plans of any structure and the details of any exterior areas intended to be part of the licensed premises, together with evidence of the applicant's right to conduct business on such premises.

8. A detailed description of the business conducted or intended to be conducted on the licensed premises, and including (but not limited to) hours of operation and number of employees.

9. The type(s) of license(s) requested.

C. If the applicant is a corporation, the corporation, each officer of the corporation and every person holding 10% or more of the outstanding stock in the corporation shall submit an application complying with the provisions of paragraph B of this section, and in addition, the applicant shall also submit the following:

1. A certified copy of its Articles of Incorporation and Bylaws.

2. The names and addresses of all officers and directors and those stockholders owning 5% or more of the voting stock of the corporation and the amount of stock held by each such stockholder.

3. The name of the resident agent of the corporation who would be authorized to accept service of process, including orders and notices issued by the Pueblo, and who will have principal supervisory responsibility for the business to be conducted on the licensed premises.

4. Such additional information regarding the corporation as the Tribal Administrator may require to assure a full disclosure of the corporation's structure and financial responsibility.

D. If the applicant is a partnership, the partnership, the managing partner and every partner having an interest amounting to 10% or more of the total equity interest in the partnership shall submit applicants complying with the provisions of paragraph B of this section, and in addition, the applicant shall submit the following:

1. A certified copy of the Partnership Agreement.

2. The names and addresses of all general partners and of all limited partners contributing 10% or more of the total value of contributions made to the limited partnership or who are entitled to 10% or more of any distributions of the limited partnership.

3. The name and address of the partner, or other agent of the partnership, authorized to accept service of process, including orders and notices issued by the Pueblo, and who will have principal supervisory responsibility for the business to be conducted in the licensed premises.

4. Such additional information regarding the partnership as the Tribal Administrator may require to assure a full disclosure of the partnership's structure and financial responsibility.

E. Every applicant who is a natural person, and every person required by paragraphs C or D of this section to comply with the provisions of paragraph B, shall also submit with the application a complete set of fingerprints, taken under the supervision of and certified to by an officer of an authorized law enforcement agency located within the State of New Mexico.

F. Every applicant for either a package license or a premises license shall submit with the completed license application a non-refundable license processing fee, in the amount set forth below:

Package license—$5,000.00
Premises license—1,000.00

G. Upon receiving a completed license application together with the required fee, the Tribal Administrator shall cause a background investigation to be performed of the applicant, to determine whether the applicant is qualified to be licensed under the provisions of this Liquor Code. Upon the written recommendation of the Tribal Administrator (if requested by the applicant), the Governor may, in his discretion, issue a preliminary license to the applicant effective for a period of no more than 90 days, but which shall be renewable for one additional period of 90 days in the event the background investigation cannot be completed within the first 90-day period; provided, however, that in no event shall the issuance of a preliminary license, or the renewal of such license for an additional 90-day period, entitle the applicant to favorable consideration with respect to the application for a package or premises license.

H. The Pueblo or any of its agencies, programs or enterprises may apply for a package or premises license by submitting an application to the Tribal Administrator identifying the applicant, describing in detail the purpose of the license, including a detailed description of the proposed licensed premises, and including the appropriate fee as set forth in Paragraph F of this section.

Section 155: Issuance of License

Upon making a determination that an applicant for a package or premises license satisfies the requirements of Section 153 of this chapter, the Governor shall issue the license, authorizing the applicant to engage in sales of alcoholic beverages within the Santa Ana Indian Reservation as permitted by the class of license applied for, and specifying in detail the licensed premises where such sales are permitted (which shall be within the Development Area), but subject also to all the terms and conditions of this Liquor Code, and to such other appropriate conditions, not inconsistent with the provisions of this Liquor Code, as the Governor may deem reasonable and necessary under the circumstances.

Section 156: Term; Renewal; Fee

Each package or premises license issued hereunder shall have a term of one (1) year from the date of issuance, provided that such license shall be renewable for additional periods of one year each by any licensee who has complied fully with the terms and provisions of the license and of this Liquor Code during the term of the license, and who remains fully qualified to be licensed under the provisions of Section 153 of this Chapter, upon payment to the Pueblo of a license renewal fee in the amount of the initial application fee, and submission of an application for renewal on a form specified by the Tribal Administrator, no less than thirty (30) days prior to the expiration date of the license. The failure to submit timely renewal application, with the required fee, may subject the licensee to a late charge of $500.00. If the renewal application is not submitted prior to expiration of the license, the Tribal Administrator may treat the license as having expired, and may require the licensee to file a new application in compliance with Section 154 of this chapter.

Section 157: Conditions of License

No licensee shall have any property interest in any license issued under the provisions of this Liquor Code, and every such license shall be deemed to confer a privilege, revocable by the Pueblo in accordance with the provisions of this Chapter. The continued validity of every package and premises license issued hereunder shall be dependent upon the following conditions:

A. Every representation made by the licensee and any of its officers, directors, shareholders, partners or other persons required to submit information in support of the application, shall have been true at the time such information was submitted, and shall continue to be true, except to the extent the licensee advises the Tribal Administrator in writing of any

change in any such information, and notwithstanding any such change, the licensee shall continue to be qualified to be licensed under the provisions of this Liquor Code.

B. The licensee shall at all times conduct its business on the Santa Ana Indian Reservation in full compliance with the provisions of this Liquor Code and with the other laws of the Pueblo.

C. The licensee shall maintain in force, public liability insurance covering the licensed premises, insuring the licensee and the Pueblo against any claims, losses or liability whatsoever for any acts or omissions of the licensee or of any business invitee on the licensed premises resulting in injury, loss or damage to any other party, with coverage limits of at least $1 million per injured person, and the Tribal Administrator shall at all times have written evidence of the continued existence of such policy of insurance.

D. The licensee shall continue to have authority to engage in business within the Development Area, and shall have paid all required rentals, assessments, taxes, or other payments due the Pueblo.

E. The business conducted on the licensed premises shall be conducted by the licensee or its employees directly, and shall not be conducted by any lessee, sublessee, assignee or other transferee, nor shall any license or any interest therein be sold, assigned, leased or otherwise transferred to any other person.

F. All alcoholic beverages sold on the licensed premises shall have been obtained from a New Mexico licensed wholesaler.

G. The licensee shall submit to the jurisdiction of the Tribal Court of the Pueblo with respect to any action brought by the Pueblo or any of its agencies or officials to enforce the provisions of this Liquor Code.

Section 158: Sanctions for Violation of License

A. Upon determining that any person licensed by the Pueblo to sell alcoholic beverages under the provisions of this chapter is for any reason no longer qualified to hold such license under the provisions of Section 153 hereof, or has violated any of the conditions set forth in Section 157, the Governor shall immediately serve written notice upon such licensee directing that he show cause within ten (10) calendar days why his license should not be suspended or revoked, or a fine imposed. The notice shall specify the precise grounds relied upon and the action proposed.

B. If the licensee fails to respond to such notice within ten (10) calendar days of service of such notice, the Governor shall issue an order suspending the license for such period as the Governor deems appropriate, or revoking the license, effective immediately, or imposing a fine, in such amount as the Governor deems reasonable. If the licensee, within the 10-day period, files with the Office of the Governor a written response and request for a hearing before the Santa Ana Tribal Court, such hearing shall be set no later than thirty (30) calendar days after receipt of such request.

C. At the hearing, the licensee, who may be represented by counsel, shall present evidence and argument directed at the issue of whether or not the asserted grounds for the proposed action are in fact true, and whether such grounds justify such action. The Pueblo may present such other evidence as it deems appropriate.

D. The court after considering all of the evidence and arguments shall issue a written decision either upholding the proposed action of the Governor, modifying such action by imposing some lesser penalty, or ruling in favor of the licensee, and such decision shall be final and conclusive.

Section 159: Special Event License

A. Any person authorized to conduct business within the Development Area, or any established organization (including any agency, department or enterprise of the Pueblo) that includes any member of the Pueblo and that has authority to conduct any activities within the Santa Ana Indian Reservation, that is not a licensee hereunder and that has not had an application for a license rejected, may apply to the Tribal Administrator for a special event license, which shall entitle the applicant to distribute alcoholic beverages, whether or not for consideration, in connection with a bona fide special event to be held by the applicant within the Development Area. Any such application must be filed in writing, in a form prescribed by the Tribal Administrator, no later than ten (10) calendar days prior to the event, and must be accompanied by a fee in the amount of $10.00, and must contain at least the following information:

1. The exact days and times during which the event will occur (provided, that in no event shall any license be in effect for a period exceeding 72 hours, from the beginning of the first day of the event until the end of the last day);

2. The precise location within the Development Area where the event will occur, and where alcoholic beverages will be distributed;

3. The nature and purpose of the event, and the identity or categories of persons who are invited to participate;

4. The nature of any food and beverages to be distributed, and the manner in which such distribution shall occur;

5. Details of all provisions made by the applicant for sanitation, security and other measures to protect the health and welfare of participants at the event;

6. Certification that the event will be covered by a policy of public liability insurance as described in Section 157(C) of this Liquor Code, that includes the Pueblo as a co-insured, or that the applicant will indemnify the Pueblo and hold it harmless from any claims, demands, liability or expense as a result of the act or omission of any person in connection with the special event.

7. Any other information required by the Tribal Administrator relative to the event.

B. The Tribal Administrator, or the Governor, shall act to approve or reject the application no later than three days following submission of the application with the required fee. If the application is approved, the Tribal Administrator or the Governor shall issue the license, which shall specify the hours during which and the premises within which sales, distribution and consumption of alcoholic beverages may occur. If any application is rejected, the rejection shall indicate the grounds therefor, and the applicant shall be entitled to file a new application correcting any deficiencies or problems found in the original application that warranted the rejection.

C. Alcoholic beverages may be sold or distributed pursuant to a special event license only at the location and during the hours specified in such license, in connection with the special event, only to participants in such special event, and only for consumption on the premises described in the license. Such sales or distribution must comply with any conditions imposed by the license, and with all other applicable provisions of this Liquor Code. All such alcoholic beverages must have been obtained from a New Mexico licensed wholesaler or retailer.

Section 160: Display of License

Every person licensed by the Pueblo to sell alcoholic beverages within the Santa Ana Indian Reservation shall prominently display the license on the licensed premises during hours of operation.

Subchapter Four: Offenses

Section 181: Purchase From or Sale to Unauthorized Persons

Within the Santa Ana Indian Reservation, no person shall purchase any alcoholic beverage at retail except from a person licensed by the Pueblo under the provisions of this title; no person except a person licensed by the Pueblo under the provisions of this title shall sell any alcoholic beverage at retail; nor shall any person sell any alcoholic beverage for resale to any person other than a person properly licensed by the Pueblo under the provisions of this title.

Section 182: Sale to Minors

A. No person shall sell or provide any alcoholic beverage to any person under the age of 21 years.

B. It shall be a defense to an alleged violation of this Section that the purchaser presented to the seller an apparently valid identification document showing the purchaser's age to be 21 years or older.

Section 183: Purchase by Minor

No person under the age of 21 years shall purchase, attempt to purchase or possess any alcoholic beverage.

Section 184: Sale to Person Under the Influence of Alcohol

No person shall sell any alcoholic beverage to a person who the seller has reason to believe is under the influence of alcohol or who the seller has reason to believe intends to provide such alcoholic beverage to a person under the influence of alcohol.

Section 185: Purchase by Person Under the Influence of Alcohol

No person under the influence of alcohol shall purchase any alcoholic beverage.

Section 186: Drinking in Public Places

No person shall consume any alcoholic beverage in any public place within the Santa Ana Indian Reservation except on premises licensed by the Pueblo for the sale of alcoholic beverages by the drink.

Section 187: Bringing Liquor Onto Licensed Premises

No person shall bring any alcoholic beverage for personal consumption onto any premises within the Santa Ana Indian Reservation where liquor is authorized to be sold by the drink, unless such beverage was purchased on such premises, or unless the possession or distribution of such beverages on such premises is otherwise licensed under the provisions of this liquor code.

Section 188: Open Containers Prohibited

No person shall have an open container of any alcoholic beverage in a public place, other than on premises licensed for the sale of alcoholic beverages by the drink,or in any automobile, whether moving or standing still. This Section shall not apply to empty containers such as aluminum cans or glass bottles collected for recycling.

Section 189: Use of False or Altered Identification

No person shall purchase or attempt to purchase any alcoholic beverage by the use of any false or altered identification document that falsely purports to show the individual to be 21 years of age or older.

Section 190: Penalties

A. Any person convicted of committing any violation of this Chapter shall be subject to punishment of up to one (1) year imprisonment or a fine not to exceed five thousand dollars ($5,000.00), or to both such imprisonment and fine.

B. Any person not a member of the Pueblo, upon committing any violation of any provision of this Chapter, may be subject to a civil action for trespass, and upon having been determined by the court to have committed the alleged violation, shall be found to have trespassed upon the lands of the Pueblo, and shall be assessed such damages as the court deems appropriate in the circumstances.

C. Any person suspected of having violated any provision of this Chapter shall, in addition to any other penalty imposed hereunder, be required to surrender any alcoholic beverages in such person's possession to the officer making the arrest or issuing the complaint.

Section 191: Jurisdiction

Any and all actions, whether civil or criminal, pertaining to alleged violations of this title, or seeking any relief against the Pueblo or any officer or employee of the Pueblo with respect to any matter addressed by this Liquor Code, shall be brought in the Tribal Court of the Pueblo, which court shall have exclusive jurisdiction thereof.

Dated: July 31, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–19940 Filed 8–6–96; 8:45 am]

BILLING CODE 4310–02–U

Bureau of Land Management

[CA–067–00–1630–00]

Establishment of an Emergency Closure to the Discharge of Firearms for the O'Neal Valley Area Located on Public Lands in San Diego Co., CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of emergency closure order.

SUMMARY: The primary purpose of this order is to close the public lands in the O'Neal Valley area to the discharge of firearms for the period of August 1, 1996 through August 31, 1996. The area affected are T 18S., R. 8E, SBM Sect 10, lot 9, N½NE¼, SE¼NE¼; and T 18S., R. 8E, SBM Sect 11, lot 12, SW¼NW¼. The following rule shall apply to this area:

No one shall discharge any firearm, bow and arrow or crossbow on public lands in the O'Neal Valley area of San Diego from August 1, 1996 to August 31, 1996. All dates are inclusive.

BACKGROUND: This area is heavily used by firearm's enthusiasts at all times of the week. There are areas with good backdrops for the safe discharge of firearms but there is also a large area of flat terrain with heavy brush and essentially no backdrops. During the affected time period, the National Guard will be constructing a fence in the south portion of the area, in the direction the firearms are usually discharged. For the safety of the soldiers working on the border fence project, this area must be closed to all shooting. The risk of a stray shot or an unsafe shooter or inattentive shooter must be avoided.

EFFECTIVE DATE: Effective August 7, 1996, and will remain in effect until August 31, 1996.

FOR FURTHER INFORMATION CONTACT:

Chief Area Ranger Robert Zimmer, Bureau of Land Management, El Centro Resource Area, 1661 S. 4th St., El Centro, CA 92243 (619) 337–4407.

SUPPLEMENTARY INFORMATION: The authority for this closure is provided in 43 CFR 8364.1(a). Violation of this closure is punishable by a fine not to exceed $100,000.00 and/or imprisonment not to exceed 12 months.

Dated: July 31, 1996.

Thomas F. Zale,

Acting Area Manager.

[FR Doc. 96–20037 Filed 8–6–96; 8:45 am]

BILLING CODE 4310–JB–M

[AZ-050–96–1610]

Notice of Intent To Prepare a Yuma District Resource Management Plan Amendment, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent, notice of scoping period and notice of scoping meeting.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Yuma District, Havasu Resource Area, will be preparing an environmental assessment level Plan Amendment to the Yuma District Resource Management Plan (RMP) to assess the impacts of a proposed electrical transmission line between Kingman, Arizona and Lake Havasu City, Arizona. The proposed 230 kV transmission line would be constructed parallel and adjacent to an existing 230 kV transmission line located in the Crossman Peak Natural Scenic Area. This notice is intended to invite the public to participate in identification of issues and development of alternatives for the plan amendment.

DATES: A public scoping meeting to identify public concerns will be held on August 29, 1996. The meeting will start at 5:00 pm and end at 8:00 pm. The meeting will be held at the Lake Havasu City Aquatic Center, Rooms 155–156, 100 Park Avenue, Lake Havasu City, Arizona. Comments relating to the identification of issues and alternatives must be postmarked by September 13, 1996.

ADDRESSES: Send comments to: Bureau of Land Management, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406.

FOR MORE INFORMATION CONTACT: Karen Montgomery, Realty Specialist, Havasu Resource Area. Telephone: (520) 855–8017.

SUPPLEMENTARY INFORMATION: The project area is located in northwestern Arizona. The proposed plan amendment will be part of a site specific project which proposes construction of a transmission line between Kingman and Lake Havasu City. Management concerns that will be addressed include but are not limited to: wildlife management, impacts on visual quality, unique vegetation, Native American Religious Concerns, and access concerns.

Anticipated Issues

The YUMA Resource Management Plan states that no utility rights-of-way will be authorized in the Crossman Peak Natural Scenic Area. An amendment to the plan completed in 1994 states that ''no additional utility rights-of-way would be authorized for the Crossman Peak Natural Scenic Area, except applications for terminal utility lines to serve private land may be accepted and considered to the extent needed to provide reasonable access pursuant to Federal Law''. The Natural Scenic Area has an existing transmission line which was studied as a utility corridor in the Resource Management Plan. The proposed route through the Natural Scenic Area parallels the existing transmission line. The plan amendment is being prepared so that the proposed action can include the route through the Crossman Peak area. An Environmental Assessment level analysis is being prepared since no significant impacts are anticipated.

Other Relevant Information

The amendment will be developed by an interdisciplinary team of resource specialists. The team will include a project manager, a wildlife specialist, a visual resources specialist, a biological resources specialist, and a cultural resource specialist. Complete records of all phases of the plan amendment process will be available for public review at Havasu Resource Area Office, Lake Havasu City, Arizona.

Dated: July 31, 1996.

Lonna M. O'Neal,

Acting State Director, Arizona.

[FR Doc. 96–20072 Filed 8–6–96; 8:45 am]

BILLING CODE 4310–32–P

[ID–957–1420–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. July 22, 1996.

The plat representing the corrective dependent resurvey of the 1989–1993 adjustment of the 1903 meanders of the left bank of the Snake River in section 4 only, T. 1 N., R. 43 E., Boise Meridian, Idaho, Group No. 776, was accepted, July 22, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquires concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706–2500.

Dated: July 22, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–20090 Filed 8–6–96; 8:45 am]

BILLING CODE 4310–GG–M

[ID–957–1040–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land will be officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. on September 10, 1996.

The plat representing the dependent resurvey of portions of the south and west boundaries, subdivisional lines, and the 1881 meanders of the Salmon River in section 31, and the survey of the 1992–1996 meanders of the Salmon River and an island in the Salmon River in section 31, T. 21 N., R. 22 E., Boise Meridian, Idaho, Group No. 857, was accepted, July 24, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706–2500.

Dated: July 24, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–20091 Filed 8–6–96; 8:45 am]

BILLING CODE 4310–GG–M

Bureau of Reclamation

Animas-La Plata Project, Colorado and New Mexico

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of proposed Amended Programmatic Agreement.

SUMMARY: The Bureau of Reclamation (Reclamation) announces the availability of the proposed Amended Programmatic Agreement (PA), under Section 106 of the National Historic Preservation Act (NHPA). This PA is between Reclamation, the Advisory Council on Historic Preservation, and the New Mexico and Colorado State Historic Preservation Officers for the Animas-La Plata Project. The purpose of this notice is to provide the public with an opportunity to comment on the Amended PA prior to final execution.

DATES: Comments must be received by September 20, 1996 for consideration.

ADDRESSES: Copies of the proposed Amended PA are available through the Western Colorado Area Office—Southern Division, P.O. Box 640, Durango, CO 81302. They are also available through the Advisory Council on Historic Preservation—Western Office of Project Review, 730 Simms Street #401, Golden, CO 80401. Comments should be addressed to Area Archaeologist, Bureau of Reclamation, Western Colorado Area Office—Southern Division.

FOR FURTHER INFORMATION CONTACT: Contact either Warren Hurley at (970) 385–6548 at the Bureau of Reclamation or Alan Stanfill at the Advisory Council for Historic Preservation (303) 231–5320.

SUPPLEMENTARY INFORMATION: In 1989 Reclamation, in consultation with the Advisory Council on Historic Preservation and the New Mexico and Colorado State Historic Preservation Officers, made a determination of adverse effect regarding the impacts of the Animas-La Plata Project (Project) on cultural resources in the proposed Project area. A PA was executed in 1991 in order to resolve the adverse effects. The PA furnishes guidelines that were to be complied with by Reclamation throughout the course of the Project. Amendments to the NHPA in 1992 have prompted a re-initiation of consultation under NHPA in order to develop an Amended PA. The original PA remains in effect until execution of the Amended PA. Reclamation's intention is to take the necessary steps to execute the Amended PA shortly after the 45 day comment period.

Dated: August 1, 1991.

Charles A. Calhoun,

Regional Director.

[FR Doc. 96–20142 Filed 8–6–96; 8:45 am]

BILLING CODE 4310–94–M

National Park Service

General Management Plan; Lava Beds National Monument; Notice of Availability of Final Environmental Impact Statement

SUMMARY: Pursuant to Section 102 (2) (C) of the National Environmental Policy Act of 1969 (P.L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a final environmental impact statement (FEIS) assessing the potential impacts of the proposed General Management Plan for Lava Beds National Monument, Modoc and Siskiyou Counties, California. Once approved, the plan will guide the management of the monument over the next 15 years.

The General Management Plan presents a proposal and three alternatives for the management, use, and development of Lava Beds National Monument. The proposed plan provides for staffing, facilities, and boundary changes to provide for long-term resource protection, and facilities and programs sufficient to provide for essential visitor services. Physical features of the plan include boundary additions at Petroglyph Point, improvements at that area to reduce damage to the petroglyphs from wind erosion and vandalism, a small-scale research facility to facilitate the recruitment of volunteers for cost-effective research and resource-management projects, additional visitor orientation displays at all entrances to the monument, improvements at the existing visitor center, and minor increases in administrative support facilities.

Alternative A: No Action, would continue the current situation at Lava Beds. Lands at Petroglyph Point would not be acquired, resources would not be adequately protected, and no additional steps would be taken to accommodate visitor interest and use. Resource quality and visitor use experience quality would decline.

Alternative B: Minimum Requirements, would be similar to the proposed action but would also include a visitor contact station in the north end of the monument, a road relocation in the Petroglyph Point section, and paving of the Medicine Lake Road. Staffing levels would be somewhat higher than the proposed plan.

Alternative C: Enhanced Visitor Experience, would be similar to Alternative B in terms of resource management and protection, but would provide a broader range of visitor service. Increased interpretive and law enforcement staffing would allow a wider range of interpretive programs and faster response to emergency situations. A visitor center at the north end of the monument and a new and larger visitor facility at the Indian Well area would increase the range of exhibits and visitor services. Additional administrative facilities would be needed to support the greater staffing.

The environmental consequences of the proposed action and the alternatives are fully documented, and mitigation provided as appropriate to minimize impacts. No significant impacts are anticipated as a result of implementing the proposed action.

SUPPLEMENTARY INFORMATION: Written comments on the general management plan and FEIS should be directed to the Superintendent, Lava Beds National Monument, P.O. Box 867, Tulelake, California 96134. Comments on the plan must be received no later than 30 days after the publication of a notice of availability by the Environmental Protection Agency in the Federal Register.

Inquiries on the general management plan and FEIS and requests for copies of the plan should be directed to Lava Beds National Monument, address as above, or by telephone at (916) 667–2282. Copies of the plan will be available for public inspection at the monument and at area libraries.

Dated; July 24, 1996.

Patricia L. Neubacher,

Acting Field Director, Pacific West Area.

[FR Doc. 96–20033 Filed 8–6–96; 8:45 am]

BILLING CODE 4310–70–P

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From the Havasupai Reservation, AZ in the Possession of the Museum of Peoples and Cultures, Brigham Young University, Provo, UT

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects in the possession of the Museum of Peoples and Cultures, Brigham Young University, Provo, UT.

A detailed assessment of the human remains was made by Museum of Peoples and Cultures professional staff in consultation with representatives of the Havasupai Tribe.

Around 1960, human remains representing one individual were removed from an unknown location within the Havasupai Reservation, AZ. No known individual was identified. The two associated funerary objects include a stone chopper and a rabbit skin and cordage robe. In 1968, this individual and associated funerary objects were donated to the Museum of Peoples and Cultures by Paul Cheesman.

Based on the assessment of the burial and manufacture of the associated funerary objects, this burial has been dated to 600–1000 AD. Archeological evidence from this area of the Grand Canyon indicates it was occupied by

Cohonina peoples during this time. Further, continuities of cultural items, food production techniques, and manner of internments all indicate the affiliation of the present-day Havasupai with the culture known archeologically as Cohonina. Oral traditions presented by representatives of the Havasupai Tribe indicate they have continuously occupied this area since the Great Flood.

Based on the above mentioned information, Museum of Peoples and Cultures officials have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Museum of Peoples and Cultures officials have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the two objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, Museum of Peoples and Cultures officials have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Havasupai Tribe.

This notice has been sent to officials of the Havasupai Tribe, the Hualapai Tribe, the Hopi Tribe, the Kaibab Band of Paiute Indians, the San Juan Southern Paiute Tribe, the Pueblo of Acoma, the Pueblo of Cochiti, the Pueblo of Isleta, the Pueblo of Jemez, and Pueblo of Laguna, the Pueblo of Sandia, the Pueblo of San Felipe, the Pueblo of Santa Ana, the Pueblo of Santo Domingo, the Pueblo of Zia, and the Pueblo of Zuni. This notice has also been sent to the Eight Northern Indian Pueblo Council (ENIPC), a non-federally recognized Native American group. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Marti Allen, Acting Director, Museum of Peoples and Cultures, Brigham Young University, 105 Allen Hall, Provo, UT 84602–3600; telephone: (801) 378–5435, before September 6, 1995. Repatriation of the human remains and associated funerary objects to the Havasupai Tribe may begin after that date if no additional claimants come forward.

Dated: August 1, 1996.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeology and Ethnography Program.

[FR Doc. 96–20069 Filed 8–6–96; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–386]

Certain Global Positioning System, Coarse Acquisition Code Receivers and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Amending the Complaint and the Commission's Notice of Investigation To Add Harris Canada, Inc., as an Additional Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ALJ granted the motion of complainant Trimble Navigation, Ltd. (Trimble) to add Harris Canada, Inc. (Harris) as a respondent to the investigation.

ADDRESSES: Copies of the nonconfidential ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205- 3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: On March 28, 1996, the Commission instituted an investigation based on a complaint filed by Trimble alleging violations of section 337 in the importation and sale of certain global positioning system receivers by reason of infringement of claims 1 and 7 of U.S. Letters Patent 4,754,465. 61 FR 13876. NovAtel Communications Ltd. (NovAtel), of Canada was the only respondent named in the Commission's notice.

On May 8, 1996, Trimble filed a motion to amend the complaint and the notice of investigation to add Harris as a respondent to the investigation, alleging that it had only recently learned that Harris manufactured the GPS receivers sold by Trimble. On May 20, 1996, NovAtel filed an opposition to Trimble's motion. On the same date, the Commission investigative attorney filed a response in support of Trimble's motion. Harris opposed Trimble's motion on May 31, 1996. On June 6, 1996, Trimble filed for leave to file a reply to Harris' opposition and on June 17, 1996, Harris filed a sur-reply to complainant's motion. The ALJ considered both the reply and the sur-reply filings. On July 3, 1996, the ALJ issued the subject ID which granted Trimble's motion to amend its complaint and the Commission's notice of investigation to include Harris Canada, Inc. as a respondent to the investigation. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.42(h) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.42(h)).

Issued: July 25, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–20127 Filed 8–6–96; 8:45 am]

BILLING CODE 7020–02–P

[Inv. No. 337–TA–390]

Certain Transport Vehicle Tires; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 1, 1996, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Michelin North America, Inc., 1 Parkway South, Greenville, SC 29615–5022. Supplementary letters enclosing corrected exhibits were filed on July 2 and 3, 1996. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain transport vehicle tires that infringe claims 1–6 of United States Letters Patent 4,480,671.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m.

to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: William F. Heinze, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on July 31, 1996, *ordered* That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain transport vehicle tires by reason of infringement of claims 1–5 or 6 of United States Letters Patent 4,480,671; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Michelin North America, Inc., 1 Parkway South, Greenville, SC 29615–5022.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Kumho & Co., Inc., 10–1, Hoehyun-Dong 2–GA, Chung-Gu, Seoul, Republic of Korea 100–052.

Kumho USA Inc., 14605 Miller Avenue, Fontana, CA 92336–1695.

(c) William F. Heinze, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–M, Washington, D.C. 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to §§ 201.16(d) and 210.13(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: July 31, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–20126 Filed 8–6–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–750 (Preliminary)]

Vector Supercomputers From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping Investigation No. 731–TA–750 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of vector supercomputers that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. § 1673a(c)(1)(B)), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by September 12, 1996. The Commission's views are due at the Department of Commerce within five business days thereafter, or by September 19, 1996.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 29, 1996.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on July 29, 1996, by Cray Research, Inc., Eagan, MN.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the

application is made not later than seven days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on August 20, 1996, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202–205–3190) not later than August 16, 1996, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 23, 1996, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: July 30, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–20128 Filed 8–6–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that, on or about July 29, 1996, a proposed Consent Decree in *United States* v. *Russell Martin Bliss, et al.,* Civil No. 89–375C–1, was lodged with the United States District Court for the Eastern District of Missouri. The Decree represents a settlement with landowner defendant Antimony Corporation of claims under Sections 106 and 107 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. 9606 and 9607, arising out of the release by Russell Martin Bliss of the hazardous substance dioxin at the East Texas Motor Freight Company Site, located at 119 Douglas Street in St. Louis, Missouri. Civil No. 89–357C–1 is one of the consolidated actions known collectively as the *Missouri Dioxin Litigation*, which was brought by the United States to obtain injunctive relief and recover response costs arising out of the release of dioxin at 28 sites in eastern Missouri. The East Texas Motor Freight Company Site is one of those 28 sites.

Under the settlement, Antimony will reimburse the Hazardous Waste Trust Fund (the Superfund) $300,000 and will assure continued access to the Site to the United States Environmental Protection Agency (EPA).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Russell Martin Bliss, et al.,* Civil No. 89–357C–1, D.J. Ref. 90–11–2–41.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Missouri, 1114 Market Street, St. Louis, Missouri 63101; EPA–Region VII's offices at 726 Minnesota Avenue, Kansas City, Missouri 66101; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 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, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $7.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–20089 Filed 8–6–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Pursuant to 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States and the State of Montana* v. *Pegasus Gold Corporation and Zortman Mining, Inc.,* Civil Act No. 95–95–BLG–JDS (D. Mont.), entered into by the United States on behalf of the United States Environmental Protection Agency, the State of Montana on behalf of the Montana Department of Environmental Quality, and Pegasus Gold Corporation and its wholly-owned subsidiary Zortman Mining, Inc. (collectively ''Defendants''), was lodged on July 22, 1996 with the United States District Court for the District of Montana. The Fort Belknap Community Council, on behalf of the Assiniboine Tribe and the Gros Ventre Tribe (the ''Tribes''), and Island Mountain Protectors Association (''IMP''), are also parties to the Consent Decree. The Tribes and IMP asserted claims against Defendants and Pegasus Gold, Inc. in Civil Action No. 95–96 BLG–JDS (D. Mont.), which will be consolidated with Civil Action No. 95–95 BLG–JDS upon entry of the Consent Decree. The proposed Consent Decree resolves claims of the United States against the Defendants under section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), claims of the State of Montana against the Defendants under Mont. Code Ann. section 75–5–631, and claims of the Tribes and IMP against the Defendants under section 505 of the Clean Water Act, 33 U.S.C. 1365, relating to the discharge of mine drainage and other mine wastewaters at or from the Defendants' Zortman and Landusky mines located next to the Fort Belknap Indian Reservation in northcentral Montana prior to the date of the lodging of the Consent Decree.

The decree includes injunctive relief addressing all discharges of mine wastewaters at or from the Zortman and Landusky mines. Defendants will pay a civil penalty in the amount of $2 million split equally between the United States and the State of Montana, and pay $1 million to the Tribes in partial satisfaction of the Tribes' common law aboriginal water rights claim. Defendants will perform three

supplemental environmental projects, including a human health study, an aquatic health study, and a water system improvements project, estimated to cost $1,490,000.00.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States and the State of Montana* v. *Pegasus Gold Corporation and Zortman Mining, Inc.,* Civil Action No. 95–95–BLG–JDS (D. Mont.), D.J. Ref. No. 90–5–1–1–4217. The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Montana, Suite 400, 2929 Third Avenue North, Billings, Montana 59103, and at the Montana Operations Office of U.S. Environmental Protection Agency Region VIII, 301 S. Park, Helena, Montana 59626–0096. Copies can also be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $91.50 for a copy of the Consent Decree with attachments, made payable to the Consent Decree Library (25 cents per page reproduction costs).

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–20088 Filed 8–6–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on March 11, 1996 and April 12, 1996, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Financial Services Technology Consortium, Inc. (''Consortium''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: Mobius Management Systems, Inc., Newton, MA; Redbanc S.A., Santiago, CHILE; YCS, Inc., Montreal, Quebec, CANADA; Mentis Corporation, Durham, NC; Fujitsu Research Institute, Tokyo, JAPAN; and Battelle, Columbus, OH were admitted as Associate Members of the Consortium. Comerica, Inc., Detroit, MI was admitted as a Principal Member.

Membership remains open and the Consortium intends to file additional written notifications disclosing all changes in membership. The Consortium also plans to file additional notifications disclosing changes in planned activities of the Consortium.

On October 21, 1993, the Financial Services Technology Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on December 14, 1993 (58 FR 65399).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–20086 Filed 8–6–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.; Electronic Check Project

Notice is hereby given that, on June 20, 1996, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Financial Service Technology Consortium, Inc.; Electronic Check Project (''Consortium'') has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: International Business Machines Corporation, White Plains, NY; and Unisys Corp., Blue Bell, PA have entered into project participation agreements with the Consortium. Electronic Clerk Clearing House Organization, Dallas, TX; Mentis Corp., Durham, NC; and the University of Southern California, Marina Del Ray, CA have entered into agreements to provide services to the Consortium in connection with the project.

The objectives of the project are early technology for, and demonstration of the feasibility of, an electronic check instrument..

Participation in the research and development project remain open, subject to execution of a suitable agreement and the assessment of a technology risk fee. The Consortium intends to file additional written notifications disclosing all changes in parties that are participating in the project.

On August 10, 1995, the Financial Services Technology Consortium, Inc.; Electronic Check Project filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on January 31, 1996 (61 FR 3463).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–20087 Filed 8–6–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Standards for the Registration of Apprenticeship Programs—Equal Employment Opportunity in Apprenticeship and Training; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the collection of information regarding registered apprenticeship programs under Title 29 CFR Part 29 (Labor Standards for the Registration of Apprenticeship Programs) and Title 29 CFR Part 30 (Equal Employment Opportunity in Apprenticeship and Training).

DATES: Written comments must be submitted on or before October 7, 1996.

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are asked to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Anthony Swoope, Director, Bureau of Apprenticeship and Training, 200 Constitution Ave., NW., Room N4649, Washington, DC 20210. INTERNET Address: swoopeadoleta.gov Telephone number: (202) 219–5921 (this is not a toll-free number). Fax number (202) 219–5011 (this is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Apprenticeship Act of 1937 authorizes and directs the Secretary of Labor ''to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Office of Education under the Department of Health, Education, and Welfare * * *.'' Section 2 of the Act authorizes the Secretary of Labor to ''publish information relating to existing and proposed labor standards of apprenticeship,'' and to ''appoint national advisory committees * * *.'' (29 U.S.C. 50a).

Title 29 CFR Part 29 sets forth labor standards to safeguard the welfare of apprentices, and to extend the application of such standards by prescribing policies and procedures concerning registration, for certain Federal purposes, of acceptable apprenticeship programs with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. These labor standards, policies and procedures cover the registration, cancellation, and deregistration of apprenticeship programs and of apprenticeship agreements; the recognition of a State agency as the appropriate agency for registering local apprenticeship programs for certain Federal purposes; and matters relating thereto. The Employment and Training Administration is also soliciting comment on the utility and potential burdens of collecting information on employment and earnings outcomes of completed apprentices.

Title 29 CFR Part 30 sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and recognized State apprenticeship agencies. These policies and procedures apply to recruitment and selection of apprentices, and to all conditions of employment and training during apprenticeship. The procedures provide for review of apprenticeship programs, for registering apprenticeship programs, for processing complaints, and for deregistering noncomplying apprenticeship programs. This part also provides policies and procedures for continuation or withdrawal of recognition of State agencies which register apprenticeship programs for Federal purposes.

II. Current Actions

Recordkeeping and data collection activities regarding registered apprenticeship are by-products of the registration system. Organizations which apply for apprenticeship sponsorship enter into an agreement with the Federal Government or cognizant State Government to operate their proposed programs consistent with 29 CFR Parts 29 and 30. Apprenticeship sponsors are not required to file reports regarding their apprentices other than individual registration and update information as an apprentice moves through their program.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Title 29 CFR Part 29, Labor Standards for the Registration of Apprenticeship Programs and Title 29 CFR Part 30 and Equal Employment Opportunity in Apprenticeship and Training.

OMB Numbers: 1205–0223 for 29 CFR Part 29; 1205–0224 for 29 CFR Part 30.

Recordkeeping: Apprenticeship sponsors are required to keep accurate records on the qualifications of each applicant pertaining to determination of compliance with these regulations. Records must be retained, where appropriate, regarding affirmative action plans and evidence that qualification standards have been validated. State apprenticeship councils are also obligated to keep adequate records pertaining to determination of compliance with these regulations. All of the above records are required to be maintained for 5 years. If this information was not required, there would be no documentation that the apprenticeship programs were being operated in a nondiscriminatory manner. Many apprenticeship programs are 4 years or more in duration; therefore, it is important to maintain the records for at least 5 years.

Section	Total respondents	Frequency	Total responses	Average time per response	Burden
Summary of Burden for 29 CFR Part 29					
Sec. 29.3	105,000	1-time	105,000	¼ hour	26,250
Sec. 29.6	99,000	1-time	99,000	1/12 hour	8,250
Sec. 29.5	5,700	1-time	5,700	2 hours	11,400
Sec. 29.7	40	1-time	40	1/12 hour	3.32
Sec. 29.12	30	1-time			
Sec. 29.13					
Total			209,740		45,903

Section	Total respondents	Frequency	Total responses	Average time per response	Burden
Summary of Burden for 30 CFR Part 29					
Sec. 30.3	4,950	1-time	4,950	½ hour	2,475
Sec. 30.4	550	1-time	550	1 hour	550
Sec. 30.5	5,000	1-time/applicant	5,000	½ hour	2,500
Sec. 30.6	50	1-time	50	5 hours	250
Sec. 30.8	44,000	1-time	44,000	1 minute	733
Sec. 30.8	30	1-time/program	22,000	5 minutes	1,833
Sec. 30.11	44,000	1-time	44,000	Hand-out	
ETA 9039	30	1-time	30	½ hour	15
Sec. 30.15	30	1-time	Completed		
Sec. 30.19	30	varies			
Total			120,530		8,356

Estimated Total Burden Cost: The cost of the burden to respondents related to 29 CFR Part 29 is $688,545 ($15.00 per hour × 45,903 hrs.). The cost of the burden to respondents related to 29 CFR Part 30 is $125,340 ($15.00 per hr. × 8,356 hrs.).

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 31, 1996.

Ronald E. Putz,

Deputy Director, Bureau of Apprenticeship and Training.

[FR Doc. 96–19989 Filed 8–6–96; 8:45 am]

BILLING CODE 4501–30–M

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

Time and Date: 8:30 a.m., August 26, 1996.

Place: On board MISSISSIPPI V at the Old Ferry Landing, Tiptonville, TN.

Status: Open to the public.

Matters to be Considered: (1) Report on general conditions of the Mississippi River and Tributaries Project and Major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries project in Memphis District.

Time and Date: 9:00 a.m., August 27, 1996.

Place: On board MISSISSIPPI V at Tom Sawyer RV Park, West Memphis, AR.

Status: Open to the public.

Matters to be Considered: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

Time and Date: 8:30 a.m., August 28, 1996.

Place: On board MISSISSIPPI V at Corps of Engineers Bank Grading and Mat Loading Facility, Foot of Deaton Street, Greenville, MS.

Status: Open to the public.

Matters to be Considered: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

Time and Date: 8:30 a.m., August 30, 1996.

Place: On board MISSISSIPPI V at the City Front, Morgan City, LA.

Status: Open to the public.

Matters to be Considered: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Noel D. Caldwell, telephone 601–634–5766.

Noel D. Caldwell,

Executive Assistant, Mississippi River Commission.

[FR Doc. 96–20261 Filed 8–5–96; 1:38 pm]

BILLING CODE 3710–GX–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences, Working Group of Subcommittee on Education; 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 Geosciences, Working Group of Subcommittee on Education (1755).

Date & Time: August 29–30, 1996—8:30 a.m. to 5:00 p.m.

Place: Room 330 NSF, 4201 Wilson Blvd., Arlington, Va.

Type of Meeting: Open.

Contact Person: Jewell Prendeville, Division of Atmospheric Sciences, NSF, Room 775, 4201 Wilson Blvd., Arlington, Va. 22230. Telephone: (703) 306–1521.

Purpose of Meeting: To evaluate existing educational programs within the directorate and make recommendations on priorities for long-range planning for future educational programs.

Agenda: Discussions on education in the Geosciences, how to use Geosciences resources in support of education and preparation of draft report.

Dated: August 2, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–20135 Filed 8–6–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs; 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 Polar Programs (1209).

Date and Time: August 27–28, 1996; 8 a.m.–5 p.m.

Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Polly Penhale, Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1033.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Antarctic Biology and Medicine Program 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: August 2, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–20136 Filed 8–6–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for the NSF Science and Technology Centers (STC) Program; Notice of Meeting Amendment

The meeting announcement is being amended to change the type of meeting from Open to Part Open. The change was necessary to provide for two closed sessions. Specific details are included in the agenda, below. The notice of this meeting originally appeared on July 18. For the convenience of the reader, the entire meeting notice is being re-published:

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 the NSF Science and Technology Centers Program.

Date and Time: August 8–9, 1996, 8:30 a.m.–5:00 p.m.

Place: Room 1235, NSF, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part Open.

Contact Person: Dr. Nathaniel G. Pitts, Director, Office of Science and Technology Infrastructure, Rm. 1270, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1040.

Purpose of Meeting: To advise the NSF on the future of its Science and Technology Centers Program.

Agenda

August 8, 1996

8:30 a.m.–9:00 a.m. Opening Remarks
9:00 a.m.–9:45 a.m. COSEPUP Report, William Brinkman
9:45 a.m.–10:15 a.m. Discussion of Directorate Advisory Committees' Recommendations
10:15 a.m. BREAK
10:30 a.m.–11:00 a.m. Role of Center in Directorate Long Range Plans
11:00 a.m.–12:15 p.m. Meetings with NSF Assistant Directors on the Management of Centers (CLOSED)
12:15 p.m.–1:15 p.m. LUNCH
1:15 p.m.–1:45 p.m. Split Matrix Management, Nat Pitts
1:45 p.m.–5:00 p.m. Discussion

August 9, 1996

8:30 a.m.–12:00 p.m. Discussion & Report Preparation
12:00 p.m.–1:00 p.m. LUNCH
1:00 p.m.–2:30 p.m. Report Preparation
2:30 p.m.–3:30 p.m. Discussion of Centers Management with Neal Lane, Director, NSF (CLOSED)
3:30–5 p.m. Report Preparation Continued (if necessary)

Reason for Closing: The discussions about the management of the Science and Technology Centers will include information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. The matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: August 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–20137 Filed 8–6–96; 8:45 am]

BILLING CODE 7555–01–M

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation; National Science Board.

DATE AND TIME: August 15, 1996, 1:00 p.m., Closed Session; August 15, 1996, 3:30 p.m., Open Session.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

STATUS: Part of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, August 15, 1996: Closed Session (1:00 p.m.–3:30 p.m.)

—Personnel
—Minutes, May & July 1996 Meetings
—Awards & Agreements
—NSF Budget

Thursday, August 15, 1996: Open Session (3:30 p.m.–4:15 p.m.)

—Minutes, May & July 1996 Meetings
—Closed Session Agenda Items—October 1996 Meeting
—Chairman's Report
—Director's Report
—Director's Report on Merit Review System
—Reports from Committees
—Other Business
—Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 96–20202 Filed 8–5–96; 9:09 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Georgia Power Company, et al. (Edwin I. Hatch Nuclear Plant, Units 1 and 2); Exemption

I

The Georgia Power Company, et al. (GPC or the licensee) is the holder of Facility Operating License Nos. DPR–57 and NPF–5 for the Edwin I. Hatch Nuclear Plant, Units 1 and 2 (Hatch). The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

Subsection (a) of 10 CFR 70.24, ''Criticality Accident Requirements,'' requires that each licensee authorized to possess special nuclear material (SNM) shall maintain in each area where such material is handled, used, or stored, an appropriate criticality monitoring system. In accordance with Subsection (a)(1) of 10 CFR 70.24, coverage of all such areas at Hatch shall be provided by two criticality detectors. However, exemptions may be requested pursuant to 10 CFR 70.24(d), provided that the licensee believes that good cause exists for the exemption.

By letter dated June 4, 1996, the licensee requested an exemption from the requirements of 10 CFR 70.24. Previous exemptions from the provisions of 10 CFR Part 70.24 for the storage of special nuclear material, including reactor fuel assemblies [maximum amount of 2,630 kg of U–235 in uranium enriched to no more than 3.0 weight percent (w/o)], were granted to Georgia Power Company for Hatch Unit 1 in NRC Materials License No. SNM–1378, issued on August 2, 1973; and for Hatch Unit 2 in NRC Materials License No. SNM–1772 issued on October 28, 1977, [maximum amount of 1,950 kg of U–235 in uranium enriched

to no more than 2.3 weight percent (w/o)]. The materials licenses expired upon conversion of the construction permits to operating licenses, which were August 6, 1974, for Unit 1, and June 13, 1978, for Hatch Unit 2. The basis for the current exemption request is the same as for the original request. Specifically, the licensee proposes to handle and store unirradiated fuel in the new fuel vault or the spent fuel pool without having a criticality monitoring system as required by 10 CFR 70.24.

The basis for the exemption is that the potential for accidental criticality is precluded because of the geometric spacing of fuel in the storage vault and administrative controls imposed on fuel handling procedures from the time the fuel is removed from approved shipping containers, until it is placed in specially designed storage racks.

Inadvertent or accidental criticality of Special Nuclear Materials (SNM) while in use in the reactor vessel is precluded through compliance with the Hatch Technical Specifications, including reactivity requirements (e.g., shutdown margins, limits on control rod movement), instrumentation requirements (e.g., reactor power and radiation monitors), and controls on refueling operations (e.g., refueling equipment interlocks). In addition, the operators' attention directed toward instruments monitoring behavior of the nuclear fuel in the reactor assures the facility is operated in such a manner as to preclude inadvertent criticality. Finally, since access to the fuel in the reactor vessel is not physically possible while in use and is procedurally controlled during refueling, there are no concerns associated with loss or diversion of the fuel.

SNM as a nuclear fuel is stored in one of two locations—the spent fuel pool or the new fuel vault. The spent fuel pool is used to store irradiated fuel under water after its removal from the reactor. The pool is designed to store fuel in a geometric array that precludes criticality. In addition, existing Technical Specification limits on k_{eff} are maintained less than or equal to 0.95, even in the event of a fuel handling accident.

The new fuel vault is used to receive and store new fuel in a dry condition upon arrival on site and prior to loading in the reactor. The new fuel vault is designed to store new fuel in a geometric array that precludes criticality. In addition, existing safety evaluations demonstrate that an effective multiplication factor is maintained less than or equal to 0.95 when the new fuel racks are fully loaded and dry or flooded with unborated water, or in the event of a fuel handling accident.

New fuel is shipped in a plastic wrap. When the fuel is removed from its transportation cask, the wrap is removed and the fuel is placed in the fuel inspection stand. Following inspection, the new fuel can either be placed in the new fuel storage vault or in the spent fuel pool (typically placed in the spent fuel pool). In no case is the plastic wrap reinserted on the fuel. Removal of the wrap requires it to be slit down the length of the new fuel assembly, thereby making its reuse highly unlikely. Therefore, there is no concern that the plastic wrap used as part of the new fuel package will be capable of holding water from flooding from overhead sources. Additionally, as discussed above, the new fuel storage racks were analyzed by the licensee for a postulated flooded condition, and the results show that k_{eff} is maintained less than or equal to 0.95.

Both irradiated and unirradiated fuel is moved to and from the reactor vessel and the spent fuel pool to accommodate refueling operations. Also, unirradiated fuel can be moved to and from the new fuel vault. In addition, fuel movements into the facility and within the reactor vessel and the spent fuel pool occur. Fuel movements are procedurally controlled and designed to preclude conditions involving criticality concerns. Moreover, previous accident analyses demonstrate that a fuel handling accident (i.e., a dropped fuel element) will not create conditions that exceed design specifications. In addition, the Technical Specifications and Technical Requirements Manuals specifically address refueling operations and limit the handling of fuel to ensure against an accidental criticality and preclude certain movements over the spent fuel pool and the reactor vessel.

Based upon the information provided, there is reasonable assurance that irradiated and unirradiated fuel will remain subcritical. The circumstances for granting an exemption to 10 CFR 70.24 are met because criticality is precluded with the present design configuration, Technical Specification requirements, administrative controls, and the fuel handling equipment and procedures. Therefore, the staff concludes that the licensee's request for an exemption from the requirements of 10 CFR 70.24 is acceptable and should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Georgia Power Company, et al., an exemption as described in Section II above from 10 CFR 70.24, ''Criticality Accident Requirements'' for Hatch Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (61 FR 36914).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of July 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–20118 Filed 8–6–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company (Joseph M. Farley Nuclear Plant, Units 1 and 2); Exemption

I

The Southern Nuclear Operating Company, et al. (SNC or the licensee) is the holder of Facility Operating License Nos. NPF–2 and NPF–8 for the Joseph M. Farley Nuclear Plant, Units 1 and 2 (Farley). The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

Subsection (a) of 10 CFR 70.24, ''Criticality Accident Requirements,'' requires that each licensee authorized to possess special nuclear material shall maintain in each area where such material is handled, used, or stored, an appropriate criticality monitoring system. In accordance with Subsection (a)(1) of 10 CFR 70.24, coverage of all such areas at Farley shall be provided by two criticality detectors. However, exemptions may be requested pursuant to 10 CFR 70.24(d), provided that the licensee believes that good cause exists for the exemption.

By letter dated May 31, 1996, the licensee requested an exemption from the requirements of 10 CFR 70.24. A previous exemption from the provisions of 10 CFR Part 70.24 for the storage of special nuclear material, including reactor fuel assemblies [maximum amount of 1,900 kg of U–235 in uranium enriched to no more than 3.15 weight percent (w/o)], was granted to Alabama

Power Company for Farley Unit 1 in NRC Materials License No. SNM–1647 and for Farley Unit 2 in NRC Materials License No. SNM–1868. The materials licenses were issued on July 20, 1976, for Unit 1 and March 12, 1980, for Unit 2.

The materials licenses expired upon conversion of the construction permits to operating licenses, which was June 26, 1977, for Unit 1 and March 31, 1981, for Unit 2, respectively. The basis for the current exemption request is the same as for the original request. Specifically, the licensee proposes to handle and store unirradiated fuel without having a criticality monitoring system as required by 10 CFR 70.24.

The basis for the exemption is that inadvertent or accidental criticality will be precluded through compliance with the Farley Technical Specifications, the geometric spacing of fuel assemblies in the new fuel storage facility and spent fuel storage pool, and administrative controls imposed on fuel handling procedures.

Inadvertent or accidental criticality of Special Nuclear Materials (SNM) while in use in the reactor vessel is precluded through compliance with the Farley Technical Specifications, including reactivity requirements (e.g., shutdown margins, limits on control rod movement), instrumentation requirements (e.g., reactor power and radiation monitors), and controls on refueling operations (e.g., control rod interlocks and source range monitor requirements). In addition, the operators' attention directed toward instruments monitoring behavior of the nuclear fuel in the reactor assures that the facility is operated in such a manner as to preclude inadvertent criticality. Finally, since access to the fuel in the reactor vessel is not physically possible while in use and is procedurally controlled during refueling, there are no concerns associated with loss or diversion of the fuel.

SNM as nuclear fuel is stored in one of two locations—the spent fuel pool or the new fuel storage area (NFSA). The spent fuel pool is used to store irradiated fuel under water after its discharge from the reactor. The pool is designed to store the fuel in a geometric array that precludes criticality. In addition, existing Technical Specification limits on k_{eff} are maintained less than or equal to 0.95, even in the event of a fuel handling accident.

The NFSA design precludes criticality by maintaining an effective multiplication factor less than or equal to 0.95 when the racks are fully loaded and in the normal dry condition or flooded with unborated water. The effective multiplication factor is also less than or equal to 0.98 under optimum moderation conditions (e.g., because of the presence of aqueous foam or mist). The NFSA is used to receive and store new fuel in a dry condition upon arrival on site and prior to loading in the reactor. Administrative controls encompass placing the assemblies in the fuel inspection stand, performing inspection activities, and lifting and placement of the assemblies into specified locations in the NFSA.

The NFSA is protected from the effects of natural phenomena, including earthquakes, tornadoes, hurricanes, floods, and external missiles. The NFSA is designed to perform its intended function and maintain structural integrity after a safe shutdown earthquake (SSE) or following a postulated hazard, such as fire, internal missiles, or pipe break.

Fresh fuel is shipped in a plastic wrap. In some cases the fuel is stored in the new fuel storage racks with the plastic wrap in place and in other cases the plastic wrap is removed prior to storage. In all cases where fuel is stored with the plastic wrap in place, the wrap either cannot hold water due to its design or in accordance with the Receipt of New Fuel Procedure it is rendered incapable of holding water prior to fuel storage. Therefore, there is no concern that the plastic wrap used as part of fresh fuel storage will hold water due to flooding from overhead sources. Additionally, as discussed above, the new fuel storage racks have been analyzed by the licensee for a postulated flooded condition and the results showed that k_{eff} is maintained less than or equal to 0.95.

Both irradiated and unirradiated fuel is moved to and from the reactor vessel, and the spent fuel pool to accommodate refueling operations. Also, unirradiated fuel can be moved to and from the new fuel storage area. In addition, movements of fuel into the facility and within the reactor vessel and within the spent fuel pool occur. Fuel movements are procedurally controlled and designed to preclude conditions involving criticality concerns. Moreover, previous accident analyses have demonstrated that a fuel handling accident (i.e., a dropped fuel element) will not create conditions which exceed design specifications. In addition, the Technical Specifications specifically address the refueling operations and limit the handling of fuel to ensure against an accidental criticality and to preclude certain movements over the spent fuel pool and the reactor vessel.

Based upon the information provided, there is reasonable assurance that irradiated and unirradiated fuel will remain subcritical. The circumstances for granting an exemption to 10 CFR 70.24 are met because criticality is precluded with the present design configuration, Technical Specifications requirements, administrative controls, and the fuel handling equipment and procedures. Therefore, the staff concludes that the licensee's request for an exemption from the requirements of 10 CFR 70.24 is acceptable and should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Southern Nuclear Operating Company an exemption as described in Section II above from 10 CFR 70.24, ''Criticality Accident Requirements'' for Farley Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (61 FR 33781).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of July 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–20117 Filed 8–6–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of August 5, 12, 19, and 26, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Matters To Be Considered

Week of August 5

There are no meetings scheduled for the Week of August 5.

Week of August 12—Tentative

There re no meetings scheduled for the Week of August 12.

Week of August 19—Tentative

There are not meetings scheduled for the Week of August 19.

Week of August 26—Tentative

Monday, August 26

2:00 p.m. Meeting with Chairman of Nuclear Safety Research Review Committee (NSRRC) (Public Meeting) (Contact: Jose Cortez, 301–415–6596)

Tuesday, August 27

10:00 a.m. Briefing on Design Certification Issues (Public Meeting) (Contact: Jerry Wilson, 301–415–3145)

2:00 p.m. Briefing on Annealing Demonstration Project (Public Meeting) (Contact: Michael Mayfield, 301–415–6690)

Wednesday, August 28

10:00 a.m. Briefing on Certification of USEC (Public Meeting) (Contact: John Hickey, 301–415–7192)

11:30 a.m. Affirmative Session (Public Meeting) (if needed)

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: August 1, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–20218 Filed 8–5–96; 10:58 am]

BILLING CODE 7590–01–M

Decision Not To Finalize the Draft of the Final Preapplication Safety Evaluation Report for the Modular High-Temperature Gas-Cooled Reactor

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of decision not to issue the final safety evaluation report for an advanced reactor design.

SUMMARY: The Nuclear Regulatory Commission (NRC) placed a notice in the Federal Register (61 FR 6869, February 22, 1996) that it had issued the draft of the final preapplication safety evaluation report (PSER) for the modular high-temperature gas-cooled reactor (MHTGR), an advanced reactor design proposed by the U.S. Department of Energy (DOE) in 1986. The NRC had been conducting a preapplication review of the MHTGR design since 1986 at the request of DOE and in a manner consistent with the Commission's Advanced Reactor Policy Statement (51 FR 24643, July 8, 1986). The preapplication review process is described in NUREG–1226, ''Development and Utilization of the NRC Policy Statement on the Regulation of Advanced Nuclear Power Plants,'' June 1988, and is conducted before an application is submitted for design approval: preliminary design approval, final design approval, or design certification under 10 CFR Part 52.

The draft PSER was issued to DOE in a letter dated February 26, 1996, and comments were requested from DOE to finalize the draft PSER. Comments were also requested from General Atomics, the vendor for the MHTGR design, in the NRC letter of March 20, 1996. Both DOE and GA responded to the NRC in the letters of March 12 and April 29, 1996, respectively, and both declined to comment on the draft PSER. DOE further stated that NRC should discontinue its review of the MHTGR.

On the basis of the responses from DOE and GA, the NRC has decided to terminate all future actions on the draft PSER for the MHTGR and, therefore, will not finalize the draft PSER.

The draft PSER was placed in the NRC Public Document Room (PDR) with the NRC letter of February 26, 1996, to DOE. The draft PSER is comprised of Volume 1, which contains the documentation of the staff's preapplication review of the MHTGR design and the conclusions of the staff on the design from this review, and Volume 2, which contains the appendices to the draft PSER, without copies of the documents that are in the PDR or in Central Files and are not essential for the staff's discussion of MHTGR licensability and policy issues in the draft PSER. These documents, which were in Appendices C through J of Volume 2, were not included in the draft PSER, when it was issued, to reduce its size; however, because the draft PSER will not be finalized, these documents will also be placed in the PDR.

FOR FURTHER INFORMATION CONTACT: Jack N. Donohew, NRC, Office of Nuclear Reactor Regulation, Washington, DC 20555–0001, Telephone (301) 415–1307.

Dated at Rockville, Maryland, this 1st day of August 1996.

For the Nuclear Regulatory Commission.

Theodore R Quay,

Director, Standardization Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 96–20116 Filed 8–6–96; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–22114; 813–144]

Great Pond Investors, L.P., et al.; Notice of Application

August 1, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Great Pond Investors, L.P. (''Great Pond''), GPCI, L.P. (the ''Co-Investment Partnership'') and Bain & Company, Inc. (''Bain'').

RELEVANT 1940 ACT SECTIONS: Applicants request an order under sections 6(b) and 6(e) granting an exemption from all provisions of the Act except section 9, certain provisions of sections 17 and 30, sections 36 through 53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants request an order exempting Great Pond and the Co-Investment Partnership (collectively, the ''Initial Partnerships'') and subsequent partnerships or other investment vehicles organized by Bain or one of its subsidiaries (the ''Subsequent Partnerships'') from all provisions of the Act with certain specified exceptions. The Initial and Subsequent Partnerships (collectively, the ''Partnerships''), each of which will be an ''employees' securities company'' within the meaning of the Act, will be offered to key employees of Bain and its subsidiaries (the ''Company Group'') who meet certain minimum financial criteria.

FILING DATES: The application was filed on October 20, 1995, and amended on March 28 and July 30, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a

hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 26, 1996, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: Two Copley Place, Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel at (202) 942–0564 or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Company Group, an international consulting firm with more than 1,200 employees worldwide, specializes in developing and implementing business strategy for numerous corporate clients in a variety of industries. The two Initial Partnerships are newly-formed Delaware limited partnerships. Subsequent Partnerships may be organized as limited partnerships, limited liability companies or other types of entities.

2. Each Partnership will have at least one general partner or manager (collectively, ''General Partners'') who will be a member of the Company Group. The Partnerships will be established from time to time to enable key employees of the Company Group to participate in certain investment opportunities of which the Company Group becomes aware that generally would not be available to them as individual investors. The ultimate purpose of the Partnerships is to reward and retain key employees and to aid the Company Group's recruitment efforts.

3. The Partnerships will operate as non-diversified, closed-end management investment companies. Except for short-term investments, Great Pond will invest solely in private equity investment funds (the ''Initial Investment Funds'') which are managed by Bain Capital, Inc. (''BCI''), a private investment firm established by former employees of the Company Group and other persons. The Initial Investment Funds, which are exempt from registration under the Act in reliance on section 3(c)(1) of the Act, will make private equity investments primarily in acquisitions and restructurings where the general partners of the Initial Investment Funds and BCI believe they can create value and improve operating profits substantially.

4. The Co-Investment Partnership may co-invest with the Initial Investment Funds in certain transactions referred to BCI by the Company Group or an employee of the Company Group. BCI may also offer the Co-Investment Partnership the opportunity to co-invest in other transactions in which the Initial Investment Funds invest. It is expected that the Subsequent Partnerships will make private equity and other investments, both directly and through investments in limited partnerships and other pooled investment vehicles managed by BCI and others, including investments in public companies and investments in registered investment companies.

5. Limited partnership interests in the Partnerships (or other similar interests in a Partnership not organized as a limited partnership) (''Interests'') will be offered without registration in a transaction exempt from registration under section 4(2) of the Securities Act of 1933 (the ''Securities Act'') or pursuant to Regulation D under the Securities Act.[1] Interests will be offered and sold to (a) ''Eligible Employees,'' as defined in the following paragraph, and (b) trusts or other investment vehicles for the benefit of such Eligible Employees and/or members of their immediate families, including self-directed 401(k) plans (''Eligible Trusts,'' collectively with Eligible Employees, ''Eligible Participants''). Members of the Company Group (temporarily and for the convenience of future Eligible Participants) may also hold Interests in a Partnership. A member of the Company Group may sell all or a portion of its Interest in a Partnership to Eligible Participants.

6. The term ''Eligible Employees'' is defined to include the following three groups of individuals who are ''accredited investors'' meeting the income requirements set forth in rule 501(a)(6) of Regulation D of the Securities Act: (i) members of the professional staff of the Company Group, which consists of (in order of seniority) directors, vice presidents, managers, consultants and assistant consultants, (ii) former vice presidents of the Company Group who provide to the Company Group thirty hours per week, on average, of services as subcontractors, and (iii) members of the administrative staff of the Company Group. Such an Eligible Employee may be determined to meet such income requirements of Regulation D by reference to income from sources other than from the Company Group. The term ''Eligible Employees'' is further defined to include the following two groups of individuals who are not ''accredited investors'' meeting the income requirements of rule 501(a)(6) of Regulation D: (i) a limited number of professionals consisting of managers who meet the sophistication and salary requirements described in paragraph 7 below and (ii) a small number of other employees of the Company Group who will be involved in managing the day-to-day affairs of the Partnerships as described in paragraph 8 below.

7. A manager who does not satisfy the income requirements of rule 501(a)(6) of Regulation D at the time of investment in a Partnership, and his related Eligible Participants, will only be permitted to invest in such Partnership if he (a) has a graduate degree in business, law or accounting, (b) has a minimum of five years of consulting, investment banking or similar business experience, and (c) has had reportable income from all sources of at least $100,000 in each of the two most recent years and a reasonable expectation of income from all sources of at least $140,000 in each year in which such person will be committed to make investments in a Partnership. In addition, such a manager will not be permitted to invest in any year more than 10 percent of his income from all sources for the immediately preceding year in the aggregate in such Partnership and in all other Partnerships in which he has previously invested. Thus, managers who will be allowed to participate in the Partnership will have sufficient knowledge, sophistication and experience in business and financial matters to be capable of evaluating the risks of an investment in a Partnership and will be able to bear the economic risk of a complete loss of such investments.

8. The other employees of the Company Group included in the definition of ''Eligible Employees'' who will not satisfy the income requirements set forth in rule 501(a)(6) of Regulation D will be primarily responsible for the operation of the Partnerships not managed by an Unaffiliated Manager (as defined below). Such responsibility will

[1] Section 4(2) exempts transactions by an issuer not involving a public offering from the registration requirements of the Securities Act.

include, among other things, monitoring investments for such Partnerships, communicating with the limited partners of such Partnerships, day-to-day tax issues involving such Partnerships, maintaining the books and records of such Partnerships and, in the case of Subsequent Partnerships, evaluating investments for such Partnerships. Accordingly, they will be closely involved with and knowledgeable about the affairs and investments of such Partnerships. These employees may be permitted to invest if they had a reportable income from all sources in the calendar year immediately preceding their participation of at least $100,000 and have a reasonable expectation of income in the years in which such person will be required to invest in a Partnership of at least $100,000 per year. Furthermore, each of these employees has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of an investment in a Partnership, or the relevant Partnership shall reasonably believe immediately prior to making any sale that such employee comes within this description. These employees will not be permitted to invest in a Partnership managed by an Unaffiliated Manager.

9. The management and control of each Partnership, including all investment decisions, will be vested exclusively in the General Partner or General Partners of the Partnership. Each Partnership will have at least one General Partner which is a member of the Company Group and whose board of directors is exclusively comprised of Eligible Employees (a ''Company Controlled General Partner''). In the case of a Partnership having more than one General Partner, certain aspects of the management and control of the Partnership may be delegated to a managing general partner (''Managing General Partner'') which shall be a Company Controlled General Partner. If required under applicable law, a General Partner will be registered under the Investment Advisers Act of 1940. All investment and valuation decisions of each Partnership will be subject to the approval of the board of directors of its Company Controlled General Partner. The board of directors of the Company Controlled General Partner will also be required by Condition 1 below to make certain fairness and other determinations in connection with the section 17 relief requested.

10. CIGP, Inc., a Delaware corporation wholly-owned by an Eligible Employee, is a general partner of each Initial Partnership (the ''Equity General Partner''). GPI, Inc., a Massachusetts corporation which is a Company Controlled General Partner (''GPI''), is the Managing General Partner of each Initial Partnership. General Partners of Subsequent Partnerships may be (a) GPI or another Company Controlled General Partner, (b) one or more Eligible Participants or an entity controlled by one or more Eligible Participants or (c) one or more third party investment managers or advisers not affiliated with the Company Group (an ''Unaffiliated Manager''). Engagement of any Unaffiliated Manager by a Partnership will be subject to the approval of the board of directors of its Company Controlled General Partner.

11. Members of the Company Group and Eligible Employees who have an interest in a General Partner and their affiliates may also make direct investments in the Partnerships. Eligible Employees serving as directors of a Company Controlled General Partner and individuals managing the day-to-day affairs of the Partnerships may also invest as limited partners of such Partnership. Generally, no individual who serves on the board of directors of the Company Controlled General Partner or manages or is otherwise employed to perform the day-to-day affairs of the Partnership will be permitted to invest his or her own funds in connection with any Partnership investment, except as a limited partner or through the General Partner or other investment funds in which such individual is an investor, or through the exercise of stock options or warrants granted, on the same terms and amounts, to all outside directors of the entities in which such Partnership invests.

12. Instead of charging for office space or administrative services provided to the Partnerships by a member of the Company Group or by employees of the Company Group, the Company Group will not require reimbursement of administrative expenses from a partnership with respect to any partner who (or whose related Eligible Employee in the case of a partner which is an Eligible Trust) continues to be employed by the Company Group or who otherwise continues to add value to the Company Group and its operations. The Company Group has agreed that the amount of administrative expenses charged each year to any partner who (or whose related Eligible Employee) is no longer employed by the Company Group will not exceed 1 percent of such partner's total capital commitment to such Partnership. To the extent any expenses are not borne by the Company Group or an Unaffiliated Manager, the Partnerships will be required to pay such expenses.

13. Neither General Partner of the Initial Partnerships will charge a management fee. A General Partner of a Subsequent Partnership may be paid a management fee, generally determined as a percentage of assets under management or aggregate commitments. The General Partners of the Initial Partnerships will not be entitled to any performance-based fee or ''carried interest'' of a specified percentage based on the gains and losses of such Partnership. General Partners of Subsequent Partnerships may be entitled to a performance-based fee or ''carried interest''.[2] All or a portion of the ''carried interest'' may be paid to the individuals who are officers, employees or stockholders of a General Partner.

14. The general partner of the Initial Investment Funds, an affiliate of BCI, will be entitled to a ''carried interest'' on the gains of the Initial Investment Funds, and BCI, as the manager of the Initial Investment Funds, will be entitled to a management fee. A portion of the ''carried interest'' will be waived with respect to participants in Great Pond in exchange for agreements with the Company and Eligible Employees who participate in Great Pond to provide BCI with access to potential investment transactions that come to their attention. The Co-Investment Partnership, which will be available as an investment only for Eligible Participants who have invested in Great Pond, will be charged a management fee by BCI or be subject to a ''carried interest.''

15. The partnership agreements for Great Pond and the Co-Investment Partnership each require a limited partner to pay capital contributions in installments, with an initial installment of 10% and 1%, respectively, of his total capital subscription upon admission as a limited partner to such Partnership. Those agreements also each provide that if a limited partner fails to pay an installment when due after not less than 5 days prior written notice, the Managing General Partner may in its sole discretion, and in addition to exercising any other rights afforded by law or at equity, take any of a number of possible actions. For example, the Managing General Partner may require the defaulting limited partner to sell his Interest to another Eligible Participant who agrees to cure the default and assume the defaulting limited partner's

[2] Any ''carried interest'' charged by a General Partner that is registered under the Investment Advisers Act of 1940 will be structured to comply with section 205 of that Act.

other obligations to the Partnership for a price determined pursuant to the partnership agreement. The partnership agreement or other instruments governing Subsequent Partnerships may provide that capital contributions are payable in full upon admission as a limited partner or in installments as determined by the General Partner or Managing General Partner and may provide for the same or similar remedies as those exercisable by the Managing General Partner with respect to the Initial Partnerships for defaults in payments of installment contributions.

16. The partnership agreements of the Initial Partnerships provide that a partner's Interest is nontransferable, except that a limited partner may, with the consent of the Equity General Partner, transfer all or a portion of his Interest in such Partnership to another Eligible Participant. Under the partnership agreements for the Initial Partnerships, limited partners may not withdraw from such Partnership. The Managing General Partner believes that the prohibition on withdrawal is necessary for the protection of the Initial Partnerships and their Limited Partners. Subsequent Partnerships are expected to have substantially similar provisions.

17. The partnership agreements of the Initial Partnerships further provide that a departed employee (or his related Eligible Trust) will not be allowed to redeem his Interests or withdraw as a limited partner. Such a limited partner will continue as a limited partner of the Initial Partnerships and will be required to fund his (or its) capital subscriptions. Each Partnership will make investment commitments based on the commitments to such Partnership of its limited partners. If a limited partner were permitted to withdraw or redeem his Interest in the Partnership and cease making capital contributions, the Partnership still would be required to meet its obligations.

18. The governing instruments of a Subsequent Partnership may provide that the General Partner or Managing General Partner, or its designee, may acquire the Interest of a limited partner in such Partnerships once such limited partner (or related Eligible Employee in the case of a limited partner which is an Eligible Trust) leaves the employ of the Company Group. A partner who remains as a partner in a Subsequent Partnership after such termination may lose certain benefits in connection with investments by such Partnership that are provided for the benefit of employees of the Company Group, such as the waiver or reduction of administrative expenses or ''carried interest'' for such employees.

19. No Partnership will invest more than 15% of its assets in securities of registered investment companies (except for temporary money market fund investments). In addition, no Partnership will acquire securities of a registered investment company if immediately thereafter the Partnership will own more than 3% of that company's outstanding voting stock. There are no other limitations on the types or amounts of securities or other instruments in which the Partnerships may invest.

20. Each Partnership will keep books and accounts concerning all its business transactions and all moneys and other consideration received, advanced, paid out, or delivered on behalf of the Partnership, the Partnership's operating results, and each partner's capital. Each Partnership's books will be accessible to all its partners at all times, subject to certain reasonable limitations as to confidential information and other concerns. The General Partner or Managing General Partner will value or have a valuation made of all of the Partnership's assets as of the end of each fiscal year. Within a specified period after the end of each fiscal year, Partnership annual financial statements audited by a certified public accountant will be sent to each partner. In addition, within 90 days after the end of each fiscal year of the Partnership or as soon as practicable thereafter, a report will be sent to each person who was a partner providing information necessary to prepare federal and state income tax returns and a report of the Partnership's investment activities during such year.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides that the SEC shall exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose outstanding securities are beneficially owned by the employees of a single employer or affiliated employers; by former employees of such employers; by members of the immediate family of such employees or former employees; or by such employer or employers together with members of any of the foregoing classes of persons.

2. Section 6(e) provides that in connection with any SEC order exempting an investment company from any provision of section 7, certain specified provisions of the Act shall be applicable to such company, and to other persons in their transactions and relations with such company, as though such company were registered under the Act, if the SEC deems it necessary or appropriate in the public interest or for the protection of investors.

3. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Partnerships from all provisions of the Act and the rules and regulations thereunder the Act, except section 9, sections 17 and 30 (except as described below), and sections 36 through 53 and the rules and regulations thereunder.

4. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a register investment company, acting as principal, knowingly to sell any security or other property to such company or to purchase from such company any security or other property. Applicants request an exemption from section 17(a) to permit: (a) a Partnership to purchase and dispose of interests in a company or other investment vehicle (other than in a member of the Company Group) which is an ''affiliated person'' of that Partnership or an ''affiliated person'' of such ''affiliated person'' (as such term is defined in the Act); (b) a member of the Company Group or entity under common control with the Company, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any entity controlled by, or under common control with, such Partnership; (c) a Partnership to invest in or engage in any transaction with any entity, acting as principal (i) in which such Partnership, any company controlled by such Partnership or any entity within the Company Group or entity under common control with the Company has invested or will invest or (ii) with which such Partnership, any company controlled by such Partnership or any entity within the Company Group or under common control with the Company is or will otherwise become affiliated; and (d) a partner in any entity in which a Partnership invests, acting as a principal, to engage in transactions directly or indirectly with the related Partnership or any company controlled by such Partnership. The requested exemption from section 17(a) would permit, among other specific examples, the investment by Great Pond in the Initial Investment Funds and investment by a member of the Company Group temporarily on behalf of a Partnership under the various circumstances described previously.

5. The partners of the Partnerships will have been fully informed of the possible extent of the Partnerships' dealings with the Company Group and

its affiliates and will be able to evaluate any attendant risks. The community of interest among the partners and the Company Group is the best insurance against any risk of abuse in this regard. Accordingly, applicants believe that an exemption from section 17(a) is consistent with the policy and purpose of the Partnerships and the protection of investors. Applicants acknowledge that transactions otherwise subject to section 17(a) for which exemptive relief has not been requested would require specific approval by the SEC.

6. Section 17(d) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant with the affiliated person in contravention of such rules and regulations as the SEC may prescribe. Rule 17d–1 under section 17(d) prohibits most joint transactions unless approved by order of the SEC. Applicants request an exemption from section 17(d) and rule 17d–1 to permit affiliated persons of each Partnership or affiliated persons of any such persons to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which such Partnership or a company controlled by such Partnership is a participant. The exemption requested would permit, among other things, investment by Great Pond in the Initial Investment Funds in which affiliated persons of Great Pond or its affiliates may invest, co-investments by the Co-Investment Partnership and Initial Investment Funds, and co-investments by a Partnership and individual partners or other investors, members of the Company Group or employees, officers, directors, or an entity within the Company Group or under common control with the Company.

7. Compliance with section 17(d) would prevent the Initial Partnerships from achieving their respective principal purposes, which are to invest in the Initial Investment Funds and to provide a vehicle for Eligible Employees to co-invest with the Initial Investment Funds. Because of the number and sophistication of the potential partners and other investors in the Partnerships and the persons affiliated with such partners or investors, strict compliance with section 17(d) may cause the Partnerships to forego investment opportunities simply because a partner of, or investor in, such Partnership or other affiliated person of such Partnership (or any affiliated person of such a person) also had, or contemplated making, a similar investment. The requested exemption is also sought to ensure that a partner in a partnership or other investment vehicles in which a Partnership invests will not directly or indirectly become subject to a burden, restriction, or other adverse effect by virtue of the related Partnership's participation in an investment opportunity.

8. The concern that permitting joint investments by a Partnership, on the one hand, and affiliated persons of the Partnership (and affiliated persons of such persons), on the other hand, might lead to disadvantageous treatment of the Partnership should be mitigated by the fact that: (a) the Company will be acutely concerned with its relationship with the key employees who invest in the Partnerships; and (b) senior officers of the Company Group will be investing in such Partnerships. In addition, the transactions subject to either sections 17(a) or 17(d) to which any Partnership is a party will be effected only after the board of directors of the Company Controlled General Partner determines that the requirements of Condition 1 below have been satisfied.

9. Section 17(f) provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with SEC rules. The Partnerships will comply with rule 17f–2 in all respects except for the following requirements, as to which an exemption is requested: (i) compliance with paragraph (b) will be achieved through safekeeping in the locked files of a member of the Company Group or by a registered broker-dealer; (ii) for purposes of paragraph (d) of the rule, (A) employees of the Company Group are deemed employees of the Partnerships, (B) employees of the General Partner are deemed to be officers of the Partnerships, and (C) the General Partner, or Managing General Partner in the case of Partnership having more than one General Partner, is deemed to be the board of directors of a Partnership; and (iii) instead of the verification procedure under paragraph (f), verification will be effected quarterly by two employees of the Company. Many of the Partnerships' investments will be evidenced only by partnership agreements or similar documents, rather than by negotiable certificates which could be misappropriated. Such instruments are most suitably kept in the Company Group's files, where they can be referred to as necessary.

10. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to securities or funds of the company. Applicants request an exemption from section 17(g) to permit the Partnerships to comply with rule 17g–1 without the necessity of having a majority of the directors of a General Partner who are not ''interested persons'' take such action and make such approvals as required by the rule.

11. Section 17(j) and rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent, deceitful, or manipulative practices in connection with the purchase or sale of a security held or to be acquired by an investment company. Rule 17j–1 also requires every registered investment company, its adviser, and its principal underwriter to adopt a written code of ethics with provisions reasonably designed to prevent fraudulent activities, and to institute procedures to prevent violations of the code. Applicants request an exemption from section 17(j) and rule 17j–1 (other than the antifraud provisions of paragraph (a) of rue 17j–1) because they are burdensome and unnecessary and because an exemption is consistent with the policy of the Act. Applicants believe that the community of interest among the partners of the Partnerships and the conditions set forth below in connection with the exemptions requested should provide adequate safeguards.

12. Sections 30(a), 30(b) and 30(d) of the Act, and the rules thereunder, generally require that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. The forms prescribed by the SEC for periodic reports have little relevance to a Partnership and would entail administrative and legal costs that outweigh any benefit to partners of the Partnerships. Applicants request an exemption from these provisions to the extent necessary to permit each Partnership to report annually to its partners in the manner described above. Because it is intended that the Partnerships will hold relatively few investments over long periods of time, which might require sophisticated and complex valuation, and because of the lack of trading or public market for Interests in the Partnerships, applicants believe the provision of annual, rather than semi-annual reports would be consistent with the policy and purpose of the Partnerships and the protection of investors.

13. Section 30(f) extends, in substance, the duties and liabilities imposed by section 16 of the Securities Exchange Act of 1934 (the ''Exchange

Act'') to any 10% shareholder, director, officer, member of an investment advisory board, investment adviser or affiliated person of any investment adviser of a registered closed-end investment company. Applicants request relief from section 30(f) to exempt each General Partner, members of the board of directors of any such General Partner, and any other persons who may be deemed members of an advisory board of a Partnership from filing reports under section 16 of the Exchange Act with respect to their ownership of Interests in such Partnership. There is no trading market for the Interests in the Partnerships and transferability of the Interests will be severely restricted. In view of the foregoing, the purpose intended to be served by section 16 is not readily apparent and applicants believe the filings are therefore unnecessary for the protection of investors and burdensome to those who would be required to file them.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d–1 thereunder (the ''Section 17 Transaction'') will be effected only if the board of directors of the Company Controlled General Partner determines that: (a) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the partners and do not involve overreaching of the Partnership or its partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the partners and the Partnership's organizational documents, and the Partnership's reports to its partners. In addition, the board of directors of the Company Controlled General Partner will record and preserve a description of such affiliated transactions, their findings, the information or materials upon which their findings are based and the basis therefor. All such records will be maintained for the life of the Partnerships and at least two years thereafter, and will be subject to examination by the SEC and its staff. Each Partnership will preserve the accounts, books and other documents required to be maintained by the order in an easily accessible place for the first two years.

2. In connection with the Section 17 Transactions, the board of directors of the Company Controlled General Partner will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnerships, or any affiliated person of such a person, promoter, or principal underwriter.

3. A General Partner will not invest the funds of any Partnership in any investment in which an ''Affiliated Co-Investor,'' as defined below, has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and an Affiliated Co-Investor are participants, unless any such Affiliated Co-Investor, prior to disposing of all or part of its investment, (a) gives such General partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on generally the same terms as, and *pro rata* with the Affiliated Co-Investor. The term ''Affiliated Co-Investor'' means the Company, and any person who is (1) an ''affiliated person'' (as such term is defined in the Act) of the Partnership, or controlled by a member of the Company Group (which persons shall not include any parties who may be ''affiliated persons'' of the Partnership solely because they have co-invested in an investment vehicle or joint enterprise, where neither the Partnership nor any member of the Company Group exercises control over such persons); (2) a member of the Company Group, or other entity controlled by a member of the Company Group; (3) an officer or director of a member of the Company Group; or (4) any entity with respect to which a General Partner of such Partnership or another member of the Company Group acts as a general partner or in a similar capacity or has a similar capacity to control the sale or other disposition of such entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by an Affiliated Co-Investor: (a) to its direct or indirect wholly-owned subsidiary, to any company (a ''parent'') of which the Affiliated Co-Investor is a direct or indirect wholly-owned subsidiary, or to direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Affiliated Co-Investor or a trust established for any Affiliated Co-Investor or any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11a2–2(T) thereunder.

4. Each Partnership and its General Partner will maintain and preserve, for the life of each such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements that are to be provided to the partners, and each annual report of such Partnership required by the terms of the applicable partnership agreement to be sent to the partners, and agree that all such records will be subject to examination by the SEC and its staff.

5. In any case where purchases or sales are made from or to an entity affiliated with a Partnership by reason of a 5% or more investment in such entity by a director, officer, or employee of a member of the Company Group or any of its affiliates, such individual will not participate in the applicable General Partner's determination of whether or not to effect such purchase or sale.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–20083 Filed 8–6–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37500; File No. SR–CBOE–96–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Disciplinary Hearing Procedures and Publication of Disciplinary Decisions

July 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on July 10, 1996,[1] the Chicago Board Options Exchange,

[1] On July 25, 1996 the Exchange filed Amendment No. 1 to the proposed rule change. Amendment No. 1 is a technical amendment clarifying the language of amended Rule 17.6(b) to include situations where there are more than two parties to a hearing. *See* letter from Arthur B. Reinstein, Senior Attorney, Chicago Board Options Exchange to Ethan Corey, Special Counsel, Division of Market Regulation, Commission (July 25, 1996).

Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 17.6 to adopt certain procedures for hearings in disciplinary cases, and proposes to amend CBOE Rule 17.9 to codify CBOE's practice regarding the publication of disciplinary decisions.

The text of the proposed rule change is available at the Office of the Secretary, CBOE 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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 17.9 to codify CBOE's practice regarding the publication of disciplinary decisions, and to amend Rule 17.6 to adopt the following additional hearing procedures for disciplinary cases: (i) the hearing Panel or the hearing Panel Chairperson will decide any unresolved pre-hearing issues at [either] *any* party's request; (ii) interlocutory review of hearing Panel decisions is prohibited unless authorized by the hearing Panel; (iii) the hearing Panel will decide the location of the hearing; (iv) the Respondent will be permitted to submit a written request to the hearing Panel asking the Panel to compel the production of non-privileged documents by the Exchange, a member or associated person, or the testimony of a member, associated person or a person within the Exchange's control and; (v) parties must provide a witness list prior to the scheduled hearing. The Exchange believes that the proposed procedures, some of which are presently in practice, will improve the speed, fairness, and efficiency of disciplinary hearings.

Publication of Decisions

It is presently the Exchange's practice to publish summaries of Business Conduct Committee hearing decisions in the Exchange's Bulletin after those decisions are final. A decision is considered final after the CBOE Board of Directors (''Board'') concludes its review of the decision or after the time for such review has expired. Only the parties to the case are permitted access to the decision prior to the time the decision is considered final.[2] The proposed rule change would codify this practice.

Decisions Regarding Pre-hearing Issues

Pursuant to existing CBOE Rule 17.6(b), the parties to a disciplinary hearing are to meet in a pre-hearing conference if the time and the nature of the proceedings permit such a meeting. The purpose of this pre-hearing conference is to clarify and simplify issues, and otherwise expedite the proceedings. The parties should attempt to reach agreement respecting the authenticity of documents, facts not in dispute, and other items which will serve to expedite the hearing. Should the parties fail to reach agreement on pre-hearing issues, Exchange rules do not presently address how those issues will be resolved. In practice, when such pre-hearing conferences are held, the hearing Panel or the Chairperson of the hearing Panel decides contested issues and any other appropriate pre-hearing issues. The Exchange is proposing to amend Rule 17.6(b) to reflect this practice.

Interlocutory Review

Currently, Exchange rules do not address whether, prior to the conclusion of a hearing, a Respondent may request Board review of a decision made by the hearing Panel. The Exchange believes such interlocutory review would be inefficient and would cause unnecessary delays in the disciplinary hearing. After the hearing is concluded and the Business Conduct Committee has issued its decision, a Respondent may request review of any issue raised during the disciplinary proceeding. The proposed rule change would provide that interlocutory Board review of any decision made by the Panel prior to completion is generally prohibited. Such interluctory review shall be permitted only if the Panel agrees to such review after determining that the issue is a controlling issue of rule or policy and that immediate Board review would materially advance the ultimate resolution of the case.

The Exchange believes this proposed amendment to Rule 17.6(b) will allow the hearing process to proceed efficiently and on a timely basis.

Hearing Location

Rule 17.6(b) currently provides that the parties will be given 15 days notice of the time and place of the hearing. However, the rules do not presently address who will decide the hearing location. In practice, most hearings are held in Chicago at the Exchange's offices. However, the Exchange believes that the hearing Panel should have the authority to decide where the hearing will take place. It could be that a location outside of Chicago is more appropriate. The proposed rule change would amend Rule 17.6(b) to provide that the hearing Panel may decide to hold a hearing outside Chicago to accommodate the parties, witnesses, Exchange staff or the Panel members.

Hearing Witnesses and Documents

Rule 17.6(c) presently provides that the hearing Panel may request the production of documentary evidence and witnesses. This rule also provides that no member or person associated with a member shall refuse to furnish relevant testimony, documentary materials or other information requested by the Panel.[3] Pursuant to Rule 17.2(b), Exchange staff many require a member or associated person to testify at a hearing or to produce documents. There is currently no procedure for a Respondent to compel a member or associated person to testify at a hearing or to produce documents. According to the present hearing procedures, a Respondent lacks the right to compel a particular member to testify or produce documents in order to defend a disciplinary case if that member does not voluntarily cooperate.

Pursuant to Rule 17.4(c), a Respondent has access to non-privileged documents in the Exchange's investigative file. However, a Respondent has no right to compel

[2] In accordance with CBOE Rule 17.14, decisions are also reported to the Central Registration Depository prior to the time the decision is considered final.

[3] The proposed rule change would move the language regarding the Panel's power to request the production of documentary evidence and witnesses from Rule 17.6 subsection (c) to the proposed subsection (d) so that the topics of documents and witnesses are addressed in one subsection of Rule 17.6. This language has been slightly revised to clarify that the Panel does not have to wait until during the hearing to make its request.

Exchange staff to produce documents not in the investigative file, nor does a Respondent have the right to require Exchange employees to appear as witnesses at a hearing.

The proposed rule change provides that if the Exchange, a member or a person associated with a member will not voluntarily produce non-privileged documents or hearing witnesses the Respondent has requested, the Respondent may submit a written request to the Panel asking the Panel to enter an order compelling the production of such non-privileged documents or compelling the testimony of the member, associated person, or a person within the Exchange's control.

To obtain such an order from the hearing Penal, a Respondent would need to demonstrate that the witnesses and documents requested are relevant and material to the Respondent's case. Before the hearing Penal enters its order, Exchange staff would have the opportunity to argue why no such order should be issued. In making their decision whether to issue the requested order, the hearing Panel would have to weigh the probative value of the evidence against considerations such as undue delay, waste of time, confusion, unfair prejudice or needless presentation of cumulative evidence. The hearing Panel could require the Respondent who requested the order to pay the witness's travel expenses or other costs of complying with the order.

Witness List

Rule 17.6(b) presently provides that not less than five business days in advance of a hearing, each party will furnish the Panel and the other parties copies of all documentary evidence such party intends to present at a hearing. The proposed rule change would also require that parties to provide a list of witnesses they intend to present at a hearing. The Exchange believes this additional requirement will make the hearing run more efficiently as both sides will know in advance which witnesses will testify and be available for cross examination.

2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(7) of the Act by providing fair procedures for hearings in disciplinary cases brought against members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested copies are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commissions Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–45 and should be submitted by August 28, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–20084 Filed 8–5–96; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

[Release No. 34–37505; File No. SR–CBOE–96–53]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by Chicago Board Options Exchange, Incorporated To Extend for an Additional Fifteen Day Period a Pilot Operation of a System for Monitoring News Announcements Made After the Close of Trading in the Primary Market for the Underlying Stock

July 31, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 1996, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for an additional 15 day period a pilot test of a system that, shortly before the close of trading each day, monitors news announcements pertaining to underlying securities, and automatically suspends the Exchange's automatic execution system in respect of options on those securities that are the subject of such announcements. The text of the proposed rule change is available at the Office of the Secretary, CBOE 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, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to extend for an additional 15 day period a pilot program to test an automated system that monitors news wires received at the Exchange shortly before the close of trading each day, and suspends the Exchange's automatic order execution system in a class of equity options whenever there is a news announcement pertaining to the security underlying options of that class.[3] The Exchange notes that the purpose of the pilot is to permit the Exchange to evaluate a system designed to respond to the problem presented when issuers of stocks underlying options make significant news announcements during the ten minutes after the close of trading in stocks when options continue to trade (*i.e.*, 3:00 to 3:10 central time). The system monitors news wires during this period, and automatically suspends the Exchange's Retail Automatic Execution System in the event of news announcements in order to prevent automatic executions at prices that do not reflect the news. The Commission approved the Exchange's proposal to test the system on a 30-day pilot basis, to allow the Exchange to monitor the effects of its operation, and then make a decision whether to request approval on a permanent basis. The Exchange agreed to submit a report to the Commission analyzing the pilot in connection with any request for permanent approval.

CBOE commenced the pilot in 45 stocks on July 1, 1996, and gradually extended it to additional classes until, on July 17, 1996, the system was in effect for all classes of equity options traded on the Exchange. The Exchange believes the results are promising, but does not believe it has had sufficient experience with the operation of the system on a floor-wide basis to assess whether to request permanent approval of the system. The Exchange is preparing the report that will assist it, and the Commission, in evaluating the operation of the system during the pilot. In order to provide some additional time to evaluate the operation of the system and to prepare its report, the Exchange is requesting approval to operate the pilot for an additional 15-day period. At the end of that period, CBOE will make a decision whether to request permanent approval. If the Exchange requests permanent approval, it will do so by submitting a proposed rule change pursuant to Section 19(b)(2) of the Act. The filing will be accompanied by a report of the Exchange's experience with the pilot, and may include a request to extend the pilot while the request for permanent approval is under consideration.

CBOE believes that the 15-day extension of the pilot requested herein is consistent with the objectives of Section 6(b)(5) of the Act, in that it will enable the Exchange and the Commission to evaluate a system designed to assure that option orders are executed at fair prices in the event of significant news announcements, which is in the interest of promoting just and equitable principles of trade and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. 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) thereunder.

The Commission believes that the Exchange's proposal provides a reasonable means to complete its evaluation of a system to address pending news announcements after the close of trading in the primary market for the underlying securities. The Commission notes that the Exchange has not reported any significant problems with the operation of the system to date, and that a 15-day extension of the pilot to complete its evaluation of the system is appropriate.

As noted in the News Monitoring Pilot Approval Order, CBOE intends to evaluate the pilot in several respects to determine if it wants to implement the system on a permanent basis.[4] The Exchange will provide the Commission with the analysis of the pilot.

The Commission finds good cause for approving this proposed rule change on an accelerated basis prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Specifically, the Commission believes that accelerated approval of the proposal is appropriate because it is to be implemented for an additional limited 15-day period which will provide CBOE with the time to complete its evaluation regarding the effectiveness of the system.

Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve the proposed rule change, as amended, or an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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 CBOE. All submissions should refer to File No. SR–CBOE–96–53 and should be submitted by August 28, 1996.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–CBOE–96–53), is hereby approved for an additional 15-day pilot period expiring on August 14, 1996, on an accelerated basis.

[3] *See* Securities Exchange Act Release No. 37380 (June 28, 1996) (SR–CBOE–96–37) (''News Monitoring Pilot Approval Order'').

[4] The additional 15-day period commences on July 31, 1996 and expires at 3:10 p.m. central time on August 14, 1996. Any request for an extension of the pilot period or request for permanent approval of the system would have to be submitted to the Commission pursuant to Section 19(b)(2) of the Act.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–20085 Filed 8–6–96; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–95–965; Order 96–8–3]

Application of Air 4000, Inc., for Issuance of Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Air 4000, Inc., fit, willing, and able, and (2) awarding it a certificate of public convenience and necessity to engage in scheduled interstate passenger air transportation.

DATES: Persons wishing to file objections should do so no later than August 19, 1996.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–95–965 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590, (202) 366–1064.

Dated: August 2, 1996.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–20146 Filed 8–6–96; 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 Chicago Midway Airport, Chicago, IL

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 Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990) (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 6, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, IL 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Hugh P. Murphy, Acting Commissioner of the City of Chicago Department of Aviation at the following address: O'Hare International Airport, P.O. Box 66142, Chicago, IL 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Louis H. Yates, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, IL 60018, (847) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 22, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Chicago Department of Aviation was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 25, 1996.

The following is a brief overview of the application.

PFC application number: 96–05–C–MDW.

Level of the PFC: $3.00.

Actual charge effective date: September 1, 1993.

Revised estimated charge expiration date: November 1, 2020.

Total estimated PFC revenue: $202,567,506.

Brief description of proposed projects: Projects to Use PFC—West Ramp Service Road; Taxiway 13C/31C; Taxiway 4L/22R; Runway 4R/22L Reconstruction. Projects to Impose and Use PFC—School Soundproofing; Residential insulation; Miscellaneous Parcel Acquisition; Airfield Lighting Vault and Emergency Power Generator Relocation; Miscellaneous Equipment Acquisition.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi.

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 City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois on July 31, 1996.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 96–20154 Filed 8–6–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Request To Amend an Approved Application To Impose a Passenger Facility Charge (PFC) at Dayton International Airport and Use PFC Revenue at Dayton International Airport and Dayton-Wright Brothers Airport, Dayton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on a request to amend an approved PFC application.

SUMMARY: The FAA proposes to rule and invites public comment on the request to amend the approved application to impose a PFC at Dayton International Airport and use the PFC revenue at Dayton International and Dayton-Wright Brothers Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 6, 1996.

ADDRESSES: Comments on this request may be mailed or delivered in triplicate to the FAA at the following address:

[5] 17 CFR 200.30–3(a)(12).

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Roy A. Williams, Director of Aviation of the city of Dayton, Ohio at the following address: Dayton International Airport, Room 304, Terminal Building, Vandalia, Ohio 45377.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Dayton under section 158.37(b) of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence C. King, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (313–487–7293). The request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to amend the application to impose PFC revenue at Dayton International Airport and use PFC revenue at Dayton International and Dayton-Wright Brothers Airports under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 25, 1996, the FAA received the request to amend the application to impose and use PFC revenue from a PFC Application submitted by the City of Dayton, Ohio, within the requirements of section 158.37(b) of Part 158. The FAA will approve or disapprove the amendment, no later than October 23, 1996.

The following is a brief overview of the request:

PFC amendment number: 94–02–C–01–DAY.

Proposed increase in the total estimated PFC revenue: From $23,467,251 to $34,013,834.

Proposed altered description of approved projects: Delete Rehabilitation of Runways 18–36 and 6L–24R from the ''Airfield Pavement Rehabilitation'' Project; delete the ''Planning for Extension of Runway 6R–24L'' Project; delete the ''Runway Deicing Fluid Storage Tank'' Project; delete the ''Security Gate Improvements'' Project; delete the ''Security Vehicle Replacement'' Project; and delete the Runway Rehabilitation from the ''Airfield Improvements at Dayton-Wright Brothers Airport'' Project.

Any person may inspect the request 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 City of Dayton, Ohio.

Issued in Des Plaines, Illinois, on July 31, 1996.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 96–20156 Filed 8–6–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at James M. Cox-Dayton International Airport, Dayton, OH

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 use the revenue from a PFC at James M. Cox-Dayton 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) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 6, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Roy Williams, Director of Aviation of the city of Dayton, Ohio, at the following address: James M. Cox-Dayton International Airport, Terminal Building, Vandalia, Ohio 45377.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Dayton under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence C. King, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (313–487–7293). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at James M. Cox-Dayton 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) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 23, 1996, the FAA determined that the application to use the revenue from a PFC submitted by the city of Dayton, Ohio, was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 23, 1996.

The following is a brief overview of the application:

PFC Application No.: 96–03–U–00–DAY.

Level of the PFC: $3.00.

Actual charge effective date: October 1, 1994.

Estimated charge expiration date: October 1, 2001.

Total approved net PFC revenue: $23,467,251.00.

Brief description of proposed project(s): PFC 13—Central Aircraft Deicing Area.

Class or classes of air carriers which the public agency has requested not to be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31.

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 city of Dayton, Ohio.

Issued in Des Plaines, Illinois, on July 31, 1996.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 96–20155 Filed 8–6–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with 49 CFR Sections 211.9 and 211.41 notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of Federal railroad

safety regulations. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved and the nature of the relief being requested.

National Railroad Passenger Corporation (Waiver Petition Docket Number H–96–1)

The National Railroad Passenger Corporation (Amtrak) seeks a waiver of compliance under Part 211.51, Tests, to allow them to develop, implement, and test technology designed to prevent train collisions and overspeed violations.

The National Railroad Passenger Corporation (Amtrak) has initiated a pilot program to develop, install, test, demonstrate, and finally place in revenue service a communications based train control system in Amtrak's Detroit to Chicago Corridor. This train control system, referred to as ''High Speed Positive Train Control System'' (HS/PTC) is designed to prevent train collisions and overspeed violations, to provide fail-safe advance start for highway crossing warning systems, to provide capability for delivering selected highway crossing ''health'' conditions to approaching trains, and to provide protection for temporary track obstructions and slow orders.

The initial installation for test purposes is being installed between Signal 175 (east of Dowagiac, MI) and Signal 195 (west of Niles, MI). Concurrent with testing in this 20 mile ''test bed'', the first phase will be extended to Signal 156 (east of Lawton, MI) and to Signal 205 (west of Dayton, MI), a total distance of approximately 49 miles. Phase 2 will extend the system westward to Signal 216 (east of New Buffalo, MI) and eastward to Signal 145 (west of Kalamazoo, MI). An extension to ''BO'' Interlocking, just east of Kalamazoo is now being planned, adding two additional miles to the territory, for a total distance of 73 miles.

The initial test bed will include two controlled sidings and four interlockings: CP178, CP180, CP190, and CP192. The first phase will include the initial test bed plus three additional controlled sidings and six additional interlockings: CP160, CP161, CP171, CP172, CP200, and CP202, for a total of five controlled sidings and ten interlockings. The second phase will include two additional controlled sidings and three additional interlockings, CP147, CP211, and CP213, for a total of seven controlled sidings, and thirteen interlockings on a contiguous 73 mile, basically single track line.

The HS/PTC uses the existing signal system as a basis for determining availability of track sections and routes. This signal status information will be transmitted to approaching trains by ATCS (900 MHZ) data radio. Wayside interface units are being installed at all signal locations, control points and grade crossings to monitor the signal aspects, monitor track and switch statuses, and provide advance start control as well as monitoring of the grade crossing warning systems. Selected wayside locations will also function as servers to collect data from adjoining locations through a wayside LAN, and communicate with trains. The servers will also be in communication with the central control facility over the Office-Wayside Link (OWL). The wayside LAN utilizes low power spread spectrum radios also in a portion of the 900 MHZ spectrum. The OWL will utilize an existing communications cable.

The HS/PTC is being overlaid upon the existing signal system, taking advantage of the vital safety logic already built into the signal system. The signal system with interlockings at the controlled sidings, and full automatic block signal protection for both opposing and following moves, is operated as a traditional ''CTC'' system, controlled from Michigan City Indiana. Electronic coded D.C. track circuits are used for train detection and for block and traffic control.

The HS/PTC system is based upon the ''ITCS'' (Incremental Train Control System) developed by Harmon Industries, Inc.

Amtrak has three requests in connection with this project. In request No. 1 Amtrak requests FRA permission to operate non-revenue test trains at speeds in excess of 79 mph, not to exceed 110 mph, for test and demonstration purposes only, with the following conditions proposed by Amtrak:

1. The portion of the test track between CP 192 (Niles, MI) and Signal 175 (east of Dowagiac, MI) will meet Class 5 requirements for speeds up to 90 mph and Class 6 requirements for speeds exceeding 90 mph.

2. Speeds in the 80 mph to 110 mph range will be limited to that portion of the single main track between CP192 and Signal 175 until Amtrak and FRA are fully satisfied that the HS/PTC under test meets all of Harmon's, Amtrak's and FRA's safety requirements.

3. All test trains operating over 79 mph in this area will be protected by an absolute block to the front of the train. Westward trains will have a clear track from Signal 175 to Signal 195 with routes over normal switches lined and locked at CP's 178, 180, 190, and 192 before the train is given authority to exceed 79 mph and before it passes Signal 175. Eastward trains will have a clear track from CP192 to CP171 with routes over normal switches lined and locked at CP's 192, 190, 180, 178 and 172 before the train is given authority to exceed 79 mph and before it passes CP192.

4. No train will be allowed to move on adjacent tracks during a high speed test or demonstration run. Controlled sidings between CP178 and CP180 and between CP190 and CP192 will either be clear of trains or trains will be instructed not to move during a test run on the adjacent main track at any speed exceeding 79 mph.

5. All public highway grade crossings will be properly protected by flag protection or by a minimum crossing warning time of 20 seconds. Private grade crossings will be closed, temporarily blocked, flagged, or protected by stop signs and a specially designed indicator.

6. Permission granted under Request No. 1 will expire upon placing the first section of this HS/PTC in regular revenue service as a fully accepted train control system.

Request No. 2

Amtrak requests that FRA, during the interim test period, not view the HS/PTC system under test as a valid train control system within the scope of Title 49 CFR, Parts 216, 217, 218, 229, 233, 235, 236 or 240. This request is made with the following conditions to be provided by Amtrak:

1. The HS/PTC system will not be ''turned on'' for an equipped regular revenue train operating through the test area unless the engineer is accompanied by a qualified Amtrak manager, and then only for the purpose of developing data on the system and/or for preliminary training purposes.

2. Except as provided in Condition No. 1, the HS/PTC will be ''turned on'' only for test and demonstration runs. Any such runs exceeding 79 mph will meet Conditions 1 through 5 proposed under Request No. 1.

3. Permission granted under Request No. 2 would expire upon placing the first section of this HS/PTC in regular revenue service as a fully accepted train control system. At this time, all applicable Title 49 CFR Parts would become effective. The termination of the interim test period as outlined above would coincide with full revenue implementation of the first portion of the HS/PTC. This would follow full

assurance by Harmon, Amtrak and FRA that the system meets all Harmon, Amtrak and FRA safety requirements.

Request No. 3

Amtrak requests FRA safety representation and full involvement in all phases of the test program.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceedings should identify the proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket Number H–96–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Communications received within 30 days of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Issued in Washington, D.C. on August 1, 1996.

Phil Olekszyk,

Acting Associate Administrator for Safety.

[FR Doc. 96–20149 Filed 8–6–96; 8:45 am]

BILLING CODE 4910–06–P

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 6, 1996.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11715–N	CPC Specialty Markets, Indianapolis, IN.	49 CFR 172.101	To authorize the transportation in commerce of a Division 4.2 material classed as ORM–D consumer commodity. (mode 1)
11717–N	Matheson Gas Products, Secaucus, NJ.	49 CFR 173.301(i)(j)	To authorize the transportation in commerce of non-flammable, non-toxic compressed gasses in foreign made cylinders from the port of entry to a compressed gas company where the materials will be repacked into DOT authorized compressed gas cylinders for shipment to domestic users of the material. (mode 1)
11720–N	Shell Oil Products Co., Houston, TX.	49 CFR 172.302, 173.121	To authorize the transportation in commerce of various Class 3 material in MC–306/MC–406 cargo tanks not authorized for packing Group I material. (mode 1)
11721–N	The Coleman Co., Inc., Wichita, KS.	49 CFR 178.65–4(c)(1)	To authorize the elimination of 100% internal visual inspection of cylinders for use in transporting Division 2.1 material. (modes 1, 2, 3, 4)
11722–N	Citergas S.A., 86400 Civray, FR	49 CFR 178.36	To authorize the transportation in commerce of non-DOT specification cylinders comparable to 3AX for use in transporting various gases. (modes 1, 2, 3)
11724–N	Sea-Land Service, Inc., Charlotte, NC.	49 CFR 176.905(c), 176.905(k)	To authorize the transportation in commerce of motor vehicles to be transported in closed freight containers, above and below deck, with up to ¼ tank of fuel and battery cables fully connected. (mode 3)
11725–N	Swales Thermal Systems, Beltsville, MD.	49 CFR 173.302, 173.304, 173.34, 173.40, 173.301, 175.3.	To authorize the transportation in commerce of certain non-DOT specification packagings (heat pipes) containing anhydrous ammonia, Division 2.2. (mode 1)
11733–N	AKZO Nobel Chemicals Inc., Chicago, IL.	49 CFR 173.301, 173.302, 173.302, 173.304, 173.304, 178.345–10(b), 178.345–10(e).	To authorize the transportation in commerce of various Division 5.2 material in certain non-DOT specification cargo tanks which deviate from the requirements for Specification DOT 407 or DOT 412. (mode 1)
11734–N	Exxon Co., Houston, TX	49 CFR 173.121(a)	To authorize reclassifying of certain Class 3, Packing Group I mixtures of gasoline and less hazardous petroleum products to Class 3, Packing Group II for transportation in MC–306 and MC–406 cargo tanks. (mode 1)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11735–N	R.D. Offutt Co., Park Rapids, MN	49 CFR 172.200, 172.201, 172.202, 172.203, 177.817(a).	To authorize the transportation of diesel fuel in bulk cargo tanks for use in farming operation without required shipping papers. (mode 1)
11736–N	Mapico Inc., St. Louis, MO	49 CFR 171.14(a)(iii)	To authorize the transportation in commerce of black iron oxide, Division 4.2, in FIBCs not to exceed 2,500, lined paper bags meeting UN5M2, repulpable paper bags, and unlined paper bags not to exceed 55 lbs. (modes 1, 2,3)
11737–N	Rensselaer Polytechnic Institute, Troy, NY.	49 CFR 173.244	To authorize the transportation in commerce of Division 4.3 material in portable tank similar to the DOT 51 tank. (mode 1)
11738–N	Ashland Petroleum Co., Ashland, KY.	49 CFR 173.12(a), 173.121(a), 173.242, 173.242.	To authorize the transportation in commerce of mixtures of gasoline with various Packing Group II and III liquid petroleum products and fuels, Class 3 in MC–306 and MC–406 cargo tanks. (mode 1)
11739–N	Oceaneering Space Systems, Houston, TX.	49 CFR 178.57	To authorize the manufacture, mark and sale of a breathing and cooling system consisting of a non-specification cylinder, comparable to a DOT Specification 4L cylinder, containing a Division 2.2 material. (modes 1, 2, 3, 4, 5)
11740–N	Morton International, Inc., Ogden, UT.	49 CFR 171.14, 172.101	To authorize the transportation in commerce of airbags as Propellant explosives, solid Division 1.3C under packaging method E–22 (a) (b) and (c) without reapplying for packaging approval prior to each shipment. (mode 4)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 1, 1996.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 96–20147 Filed 8–6–96; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) as described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. Application numbers with the suffix ''P'' denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before August 22, 1996.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Applicant	Renewal of exemption
9819–M	Halliburton Energy Services, Duncan, OK [1]	9819
10870–M	Anderson Products Inc., Haw River, NC [2]	10870
11025–M	Mass Systems Inc., Baldwin Park, CA [3]	11025
11651–M	Bayer Corp., Pittsburgh, PA [4]	11651
11658–M	Arbel Fauvet Rail, Douai, FR [5]	11658
11685–M	American Pyrotechnics Assoc., Chestertown, MD [6]	11685
11706–M	URS Consultants, Inc., Denver, CO [7]	11706
11730–M	USMX, Inc., Lakewood, CO [8]	11730

[1] To modify the exemption to provide for cargo vessel as an additional mode of transportation for use in transporting Class 3 liquids and Class 8 liquids in non-DOT specification stainless steel portable tanks.

[2] To modify the exemption to provide for cargo vessel as an additional mode of transportation for shipment of glass ampoules within a fiberboard box.

[3] To modify the exemption to provide for an additional non-DOT specification 40 cubic inch welded stainless steel pressure vessel rated for a service pressure for 3000 psig.

[4] To reissue exemption originally issued on an emergency basis for transportation in commerce of self-heating solid, organic, division 4.2 material in non-DOT specification sift-proof cargo tanks.

[5] To modify the exemption to provide for additional non-DOT specification IMO Type 5 portable tanks for use in transporting certain Division 2.1 and 2.2 gases.

[6] To reissue the exemption originally issued on an emergency basis to authorize the shipment of approved fireworks devices classed as Division 1.3G or 1.4G explosives that have an approved electric match (igniter) attached to the device.

[7] To reissue the exemption originally issued on an emergency basis for transportation for final disposition of drums containing hazardous waste, solid n.o.s., Class 9.

[8] To reissue exemption originally issued on an emergency basis from the quantity limitations applicable to packages carried by cargo aircraft for Division 5.1, 6.1 and Class 8 hazardous materials for air transportation.

Application No.	Applicant	Parties to exemption
3004–P	Lockheed Martin Aeronautical Systems, Marietta, GA	3004
3142–P	Sandia National Laboratories, Albuquerque, NM	3142
3142–P	Los Alamos National Laboratory, Los Alamos, NM	3142
3549–P	Mason & Hanger Corporation, Amarillo, TX	3549
3549–P	EG&G Mound Applied Technologies, Miamisburg, OH	3549
3549–P	Sandia National Laboratories, Albuquerque, NM	3549
3549–P	Los Alamos National Laboratory, Los Alamos, NM	3549
4588–P	Mason & Hanger Corporation, Amarillo, TX	4588
5022–P	Sandia National Laboratories, Albuquerque, NM	5022
5704–P	Tri-State Motor Transit, Inc., Joplin, MO	5704
5948–P	Lockheed Martin Idaho Technologies Company, Idaho Falls, ID	5948
6658–P	Mason & Hanger Corporation, Amarillo, TX	6658
6658–P	Sandia National Laboratories, Albuquerque, NM	6658
6691–P	Medical-Technical Gases, Inc., Medford, MA	6691
6929–P	Sandia National Laboratories, Albuquerque, NM	6929
6962–P	Sandia National Laboratories, Albuquerque, NM	6962
6962–P	Los Alamos National Laboratory, Los Alamos, NM	6962
6985–P	Mason & Hanger Corporation, Amarillo, TX	6985
6985–P	Sandia National Laboratories, Albuquerque, NM	6985
7269–P	Mason & Hanger Corporation, Amarillo, TX	7269
7835–P	Alameda Chemical, Nampa/Boise, ID	7835
7835–P	Alameda Chemical, Phoenix, AZ	7835
7835–P	Alameda Chemical, Oakland, CA	7835
7835–P	Alameda Chemical, Camarillo, CA	7835
7835–P	Alameda Chemical, Sacramento, CA	7835
8009–P	County Sanitation Districts of Los Angeles County, Whittier, CA	8009
8307–P	Sandia National Laboratories, Albuquerque, NM	8307
8451–P	EG&G Mound Applied Technologies, Miamisburg, OH	8451
8451–P	Mason & Hanger Corporation, Amarillo, TX	8451
8451–P	Lawrence Livermore National Laboratory, Livermore, CA	8451
8451–P	Radian International LLC, Austin, TX	8451
8451–P	General Electric Aircraft Engines, Cincinnati, OH	8451
8451–P	Lockheed Martin Vought Systems Corporation, Dallas TX	8451
8451–P	Cambridge Isotope Laboratories, Andover, MA	8451
8451–P	Sandia National Laboratories, Albuquerque, NM	8451
8451–P	Lockheed Martin Idaho Technologies Company, Idaho Falls, ID	8451
8451–P	ICI Explosives Environmental Company, Valley Forge, PA	8451
8451–P	Cartridge Actuated Devices, Inc., Byram, NJ	8451
8451–P	Hughes Defense Communications, Fort Wayne, IN	8451
8451–P	Tri-State Motor Transit, Inc., Joplin, MO	8451
8451–P	Los Alamos National Laboratory, Los Alamos, NM	8451
8453–P	Dyna-Blast, Inc., Nortonville, KY	8453
8915–P	E.I. Dupont De Nemours & Company, Inc., Wilmington, DE	8915
9184–P	Elkem American Carbide Company, Ashtabula, OH	9184
9184–P	Midwest Carbide, Pryor, OK	9184
9248–P	Reaction Products, Los Angeles, CA	9248
9275–P	Guerlain, Inc., Piscataway, NJ	9275
9549–P	Advanced Pipe Recovery Systems, Inc., Millsap TX	9549
9723–P	Midwest Transport, Inc., Menomonee Falls, WI	9723
9723–P	American Ecology Transportation, Pasadena, TX	9723
9723–P	Cactus Vacuum Truck Service, Inc., Grand Prairie, TX	9723
9723–P	Bealine Service Company, Inc., Pasadena, TX	9723
9741–P	International Trade Partners, Inc., Medley, FL	9741
9741–P	Lockheed Martin Idaho Technologies Company, Idaho Falls, ID	9741
9769–P	American Ecology Transportation, Pasadena, TX	9769
9769–P	Tri-State Motor Transit, Inc., Joplin, MO	9769
9769–P	Cactus Vacuum Truck Service, Inc., Grand Prairie, TX	9769
9769–P	Bealine Service Company, Inc., Pasadena, TX	9769
10049–P	Enderby Gas, Inc., Gainesville, TX	10049
10067–P	Sandia National Laboratories, Albuquerque, NM	10067

Application No.	Applicant	Parties to exemption
10291–P	Eurotainer SA, Paris, France	10291
10300–P	Sandia National Laboratories, Albuquerque, NM	10300
10307–P	Elf Atochem North America, Inc., Granger, WY	10307
10365–P	Sandia National Laboratories, Albuquerque, NM	10365
10365–P	Lockheed Martin Utility Services (LMUS), Bethesda, MD	10365
10536–P	EG&G Mound Applied Technologies, Miamisburg, OH	10536
10536–P	Mason & Hanger Corporation, Amarillo, TX	10536
10536–P	EG&G Star City, Miamisburg, OH	10536
10536–P	Sandia National Laboratories, Albuquerque, NM	10536
10594–P	Palisade Constructors, Inc., Palisade, CO	10594
10594–P	Bogue Construction, Inc., Fruita, CO	10594
10594–P	Brickey Trucking, Naturita, CO	10594
10594–P	Reams Construction Co., Naturita, CO	10594
10594–P	Nielsons, Inc., Cortez, CO	10594
10594–P	Granite Construction Company, Sparks, NV	10594
10594–P	MK-Ferguson Company, Albuquerque, NM	10594
10594–P	Transystems, Inc., Great Falls, MT	10594
10885–P	Mason & Hanger Corporation, Amarillo, TX	10885
10885–P	Sandia National Laboratories, Albuquerque, NM	10885
10933–P	Midwest Transport, Inc., Menomonee Falls, WI	10933
10933–P	Tri-State Motor Transit, Inc., Joplin, MO	10933
11055–P	Triumvirate Environmental, Inc., Somerville, MA	11055
11153–P	Clean Harbors Environmental Services, Inc., Braintree, MA	11153
11153–P	Franklin Environmental Services, Inc., Wrentham, MA	11153
11153–P	Triumvirate Environmental, Inc., Somerville, MA	11153
11156–P	Evenson Explosives, LLC, Morris, IL	11156
11196–P	Eurotainer SA, Paris, France	11196
11197–P	Wacker Silicones Corporation, Adrian, MI	11197
11230–P	Boren-Ireco Company, Inc., Parrish, AL	11230
11294–P	Clean Harbors Environmental Services, Inc., Braintree, MA	11294
11294–P	Seacoast Ocean Services, Inc., Portland, ME	11294
11373–P	Mid-State Chemical & Supply Corp., Indianapolis, IN	11373
11373–P	Taylor Salt and Chemical Company, Inc., Charlotte, NC	11373
11373–P	Industrial Chemicals, Inc., Birmingham, AL	11373
11373–P	Van Waters & Rogers, Inc., Kirkland, WA	11373
11373–P	Chem-Way Corporation, Charlotte, NC	11373
11373–P	Independent Chemical Corporation, Glendale, NY	11373
11373–P	Van Waters & Rogers, Inc., Los Angeles, CA	11373
11373–P	Burris Chemical, Inc., Charleston, SC	11373
11373–P	Worth Chemical Corporation, Greensboro, NC	11373
11373–P	Prillaman Chemical Corporation, Martinsville, VA	11373
11373–P	Pioneer Chemical, Inc., Mesquite, TX	11373
11373–P	Veckridge Chemical Company, Inc., Kearny, NJ	11373
11373–P	Slack Chemical Company, Carthage, NY	11373
11373–P	Apperson Chemicals, Inc., Jacksonville, FL	11373
11373–P	Chemical Services, Incorporated, Dayton, OH	11373
11373–P	Chemical Resources, Incorporated, Louisville, KY	11373
11373–P	Chemicals, Incorporated, Cincinnati, OH	11373
11373–P	Bonded Chemicals, Incorporated, Columbus, OH	11373
11405–P	L & H Technologies, Charlotte, NC	11405
11405–P	Benco, Charlotte, NC	11405
11416–P	Lockheed Martin Utility Services (LMUS), Bethesda, MD	11416
11458–P	Creative Products, Inc., Rossville, IL	11458
11575–P	Adco Services, Inc., Tinley Park, IL	11575
11575–P	Adcom Express, Inc., Tinley Park, IL	11575
11588–P	American Waste Industries, Inc., Norfolk, VA	11588
11588–P	American Medical Disposal, Oklahoma City, OK	11588
11588–P	Medihaul, Inc., Orion, MI	11588
11588–P	NVISION Works, Inc., Navesink, NJ	11588
11624–P	PPM Canada, Inc., Columbia, SC	11624
11624–P	United States Pollution Control, Inc., Columbia, SC	11624
11624–P	Bryson Industrial Services, Inc., Columbia, SC	11624
11624–P	Solvent Services Company, Columbia, SC	11624
11624–P	Laidlaw Environmental Services de Mexico, S.A., Columbia, SC	11624
11624–P	Laidlaw Environmental Services, Ltd., Columbia, SC	11624
11624–P	Laidlaw Environmental Services (Quebec), Ltd., Columbia, SC	11624
11624–P	Laidlaw Environmental Services of California, Inc., Columbia, SC	11624
11624–P	Laidlaw Environmental Services of South Carolina, Columbia, SC	11624
11624–P	Laidlaw Environmental Services of Illinois, Inc., Columbia, SC	11624
11624–P	Laidlaw Environmental Services of Chattanooga, Columbia, SC	11624
11624–P	Laidlaw Environmental Services (North East), Inc., Columbia, SC	11624
11624–P	Laidlaw Environmental Services (Recovery), Inc., Columbia, SC	11624
11624–P	Laidlaw Environmental Services (TES), Inc., Columbia, SC	11624

Application No.	Applicant	Parties to exemption
11624–P	Laidlaw Environmental Services (FS), Inc., Columbia, SC	11624
11624–P	Laidlaw Environmental Services (WT), Inc., Columbia, SC	11624
11624–P	Laidlaw Environmental Services (TS), Inc., Columbia, SC	11624
11624–P	Municipal Service Corporation, Columbia, SC	11624
11624–P	Laidlaw Environmental Services (TG), Inc., Columbia, SC	11624
11624–P	Laidlaw Environmental Services of Bartow, Inc., Columbia, SC	11624
11666–P	SGL Carbon Corporation, Charlotte, NC	11666
11685–P	National Fireworks Association, Inc., Harrisburg, PA	11685

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 1, 1996.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 96–20148 Filed 8–6–96; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5309

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5309, Application for Determination of Employee Stock Ownership Plan.

DATES: Written comments should be received on or before October 7, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Determination of Employee Stock Ownership Plan.

OMB Number: 1545–0284.

Form Number: 5309.

Abstract: Internal Revenue Code section 404(a) allows employers an income tax deduction for contributions to their qualified deferred compensation plans. Form 5309 is used to request an IRS determination letter about whether the plan is qualified under Code section 409 or 4975(e)(7).

Current Actions: There are no changes being made to this form.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 462.

Estimated Time Per Respondent: 8 hr., 26 min.

Estimated Total Annual Burden Hours: 3,895.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 26, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–20023 Filed 8–6–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Forms W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3PR, W–3cPR, and W–3SS

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3PR, W–3cPR, and W–3SS.

DATES: Written comments should be received on or before October 7, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: W–2 (Wage and Tax Statement), W–2c (Statement of Corrected Income and Tax Amounts), W–2AS (American Samoa Wage and Tax Statement), W–2GU (Guam Wage and Tax Statement), W–2VI (U.S. Virgin Islands Wage and Tax Statement), W–3 (Transmittal of Wage and Tax Statements), W–3c (Transmittal of Corrected Income and Tax Statements), W–3PR (Informe de Comprobantes de Retencion), W–3cPR (Transmision de Comprobantes de Retencion Corregidos), and W–3SS (Transmittal of Wage and Tax Statements).

OMB Number: 1545–0008

Form Number: W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3PR, W–3cPR, and W–3SS.

Abstract: Employers report income and withholding information on Form W–2. Forms W–2AS, W–2GU and W–2VI are variations of Form W–2 for use in U.S. possessions. The Form W–3 series is used to transmit W–2 series forms to the Social Security Administration. Forms W–2c, W–3c and W–3cPR are used to correct previously filed Forms W–2, W–3 and W–3PR. Individuals use Form W–2 to prepare their income tax returns.

Current Actions: There are no changes being made to these forms.

Type of Review: Extension of currently approved collections.

Affected Public: Businesses or other for-profit organizations, individuals or households, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 6,493,883.

Estimated Time Per Respondent: 16 hr. 38 min.

Estimated Total Annual Burden Hours: 108,012,710.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 29, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–20024 Filed 8–6–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 5713, and Schedules A, B, and C (Form 5713)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5713, and Schedules A, B, and C (Form 5713).

DATES: Written comments should be received on or before October 7, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: International Boycott Report.

OMB Number: 1545–0216.

Form Number: 5713, and Schedules A, B, and C (Form 5713).

Abstract: Form 5713 and related Schedules A, B, and C are used by any entity that has operations in a ''boycotting'' country. If that entity cooperates with or participates in an international boycott, it loses a portion of the following benefits: The foreign tax credit, deferral of income of a foreign controlled corporation (FSC), deferral of income of a domestic international sales corporation (DISC), or deferral of income of a foreign sales corporation (FSC). The IRS uses Form 5713 to determine if any of these benefits should be lost. The information is also used as the basis for a report to the Congress.

Current Actions: There are no changes being made to this form.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 3,600.

Estimated Time Per Respondent: 27 hr., 30 min.

Estimated Total Annual Burden Hours: 99,026.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 29, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–20151 Filed 8–6–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 8846

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8846, Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.

DATES: Written comments should be received on or before October 7, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.

OMB Number: 1545–1414.

Abstract: Employers in food or beverage establishments where tipping is customary can claim an income tax credit for the amount of social security and Medicare taxes paid (employer's share) on tips employees reported, other than on tips used to meet the minimum wage requirement. Form 8846 is used by employers to claim the credit and by IRS to verify that the credit is computed correctly.

Current Actions: Part II of Form 8846, Tax Liability Limit, has been revised extensively. All of the computations are now made on the form and in logical order following the provisions of Internal Revenue Code sections 38 and 45B. The revisions include: Deleting line 8f, Orphan drug credit because it expired; adding new line 10, Alternative minimum tax, and new line 14, Enter the greater of line 12 or line 13.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 11,250.

Estimated Time Per Respondent: 7 hr., 10 min.

Estimated Total Annual Burden Hours: 80,663.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 25, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–20152 Filed 8–6–96; 8:45 am]

BILLING CODE 4830–01–U

Office of Thrift Supervision

[AC–40; OTS No. 04985]

Chester Savings Bank, FSB, Chester, Illinois; Approval of Conversion Application

Notice is hereby given that on July 24, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Chester Savings Bank, FSB, Chester, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: August 1, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–20032 Filed 8–6–96; 8:45 am]

BILLING CODE 6720–01–M

[AC–41; OTS No. 05053]

Home Federal Savings and Loan Association of Elgin, Elgin, Illinois; Approval of Conversion Application

Notice is hereby given that on July 25, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Home Federal Savings and Loan Association of Elgin, Elgin, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: August 1, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–20031 Filed 8–6–96; 8:45 am]

BILLING CODE 6720–01–M

Corrections

Federal Register
Vol. 61, No. 153
Wednesday, August 7, 1996

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 COMMERCE

Foreign-Trade Zones Board

[Docket 56-96]

Foreign-Trade Zone 181—Akron-Canton, Ohio Area; Applications for Expansion

Correction

In the correction to notice document 96–18257, appearing on page 39695, in the issue of Tuesday, July 30, 1996, the entry should read as set forth below:

On page 37443, in the first column, in the fourth full paragraph, in the seventh line, ''[60 days from publication]'' should read ''September 16, 1996''.

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32 and 64

[CC Docket No. 96–150, FCC 96–309]

Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996

Correction

In proposed rule document 96–19563 beginning on page 40161 in the issue of Thursday, August 1, 1996, make the following correction:

On page 40180, in the 2d column, in the 1st paragraph, in the 10th and 11th lines, ''[insert date 60 days after publication in the Federal Register.]'' should read ''September 30, 1996''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

2115-AF23

Licensing and Manning for Officers of Towing Vessels

Correction

In the correction to proposed rule document 96–15346 appearing on page 36608 in the issue of Thursday, July 11, 1996 the following entry should read as set forth below:

§ 10.463 [Corrected]

On page 31345, in the second column, in § 10.463(b), in the seventh line ''10.414'' should read ''10.424''; and in the eighth line ''10,418'' should read ''10.418''.

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

Correction

In notice document 96–16213 beginning on page 33097 in the issue of Wednesday, June 26, 1996, make the following correction:

On page 33099, the table is replaced with the following:

BILLING CODE 1505–01–D

	(A) +	(B) =	(C)	
ALASKA: (CONT'D)				
KETCHIKAN				
05-16--09-15	86	72	158	05-16-96
09-16--05-15	73	70	143	03-01-96
KING COVE	85	69	154	03-01-96
KING SALMON	77	68	145	03-01-96
KLAWOCK				
05-01--08-31	97	96	193	05-01-96
09-01--04-30	75	94	169	03-01-96
KODIAK	79	68	147	03-01-96
KOTZEBUE	133	87	220	05-01-93
KUPARUK OILFIELD	75	52	127	12-01-90
METLAKATLA				
06-01--10-01	95	58	153	06-01-94
10-02--05-31	72	56	128	02-01-94
MURPHY DOME				
05-15--09-15	112	59	171	05-15-96
09-16--05-14	70	55	125	03-01-96
NELSON LAGOON	102	39	141	06-01-91
NOATAK	133	87	220	05-01-93
NOME	86	67	153	05-01-96
NOORVIK	133	87	220	05-01-93
PETERSBURG	77	62	139	03-01-96
POINT HOPE	99	61	160	12-01-90
POINT LAY	106	73	179	12-01-90
PRUDHOE BAY-DEADHORSE	73	60	133	11-01-93
SAND POINT	64	67	131	08-01-94
SEWARD				
05-16--08-31	115	60	175	05-16-96
09-01--05-15	83	57	140	03-01-96
SHUNGNAK	133	87	220	05-01-93
SITKA-MT. EDGECOMBE				
04-01--10-31	94	58	152	04-01-96
11-01--03-31	83	57	140	03-01-96
SKAGWAY				
05-16--09-15	86	72	158	05-16-96
09-16--05-15	73	70	143	03-01-96
SPRUCE CAPE	79	68	147	03-01-96
ST. GEORGE	100	39	139	06-01-91
ST. MARY'S	77	59	136	06-01-93
ST. PAUL ISLAND	62	63	125	10-01-93
TANANA	86	67	153	05-01-96
TOK				
05-01--09-30	70	51	121	05-01-96
10-01--04-30	50	49	99	03-01-96
UMIAT	97	63	160	12-01-90
VALDEZ				
05-01--09-14	99	66	165	05-01-96
09-15--04-30	83	64	147	03-01-96
WAINWRIGHT	90	75	165	12-01-90

(Bulletin No. 188) Page 3

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
WALKER LAKE	82	54	136	12-01-90

BILLING CODE 1505–01–C

federal register

Wednesday
August 7, 1996

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1 et al.

Federal Acquisition Regulations: Two-Phase Design Build Selection Procedures; Requirement for Certified Cost or Pricing Data, Exception; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 14 and 36

[FAR Case 96–305]

RIN 9000 AH17

Federal Acquisition Regulation; Two-Phase Design Build Selection Procedures

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to implement Section 4105 of the Fiscal Year 1996 Defense Authorization Act which authorizes the use of two-phase design-build construction procedures. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before October 7, 1996, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037,Washington, DC 20405.

Please cite FAR case 96–305 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 96–305.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends FAR Part 36 to implement Section 4105 of the Fiscal Year 1996 Defense Authorization Act. Section 4105 adds Section 2305a of Title 10 U.S.C. and Section 303M of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253m). Comments were received in response to a Notice of Proposed Rulemaking that was published on February 21, 1996 (61 FR 6760). The proposed rule details considerations that would be used by a contracting officer to determine whether to use the two-phase design-build method and describes the selection procedures. As required by the statute, the proposed rule limits the number of proposals to be considered in the second phase to no more than five, unless the agency determines that a greater number is in the Government's interest and is consistent with the purposes and objectives of two-phase design-build contracting.

B. Regulatory Flexibility Act

The proposed changes 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 rule reduces the cost of proposal preparation for those offerors not selected for Phase Two. An Initial Regulatory Flexibility Analysis (IRFA) has, therefore, been prepared. A copy of the IRFA will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments from 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 5 U.S.C. 601, *et seq.*, (FAR Case 96–305) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public 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 Parts 1, 5, 14 and 36

Government procurement.

Dated: July 31, 1996.

Edward C. Loeb,

Director, Federal Acquisition Division.

Therefore, it is proposed that 48 CFR Parts 1, 5, 14 and 36 be amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 5, 14 and 36 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1–FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Section 1.106 is amended by revising the entry for ''36.302'' in the OMB approval table to read ''36.213–2''.

PART 5–PUBLICIZING CONTRACT ACTIONS

3. Section 5.204 is amended by revising the first sentence to read as follows:

5.204 Presolicitation notices.

Contracting officers shall publicize presolicitation notices in the CBD (see 15.404 and 36.213–2). * * *

PART 14—SEALED BIDDING

14.202–1 [Amended]

4. Section 14.202–1 is amended by revising the parenthetical following the first sentence in paragraph (a) to read ''(For construction contracts, see 36.213–3(a).)''

5. Section 14.211 is amended by revising the first sentence of paragraph (a) to read as follows:

14.211 Release of acquisition information.

(a) *Before solicitation*. Information concerning proposed acquisitions shall not be released outside the Government before solicitation except for presolicitation notices in accordance with 14.205–4(c) or 36.213–2, or longrange acquisition estimates in accordance with 5.404, or synopses in accordance with 5.201. * * *

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

6. Section 36.102 is amended by adding, in alphabetical order, the definitions ''Design,'' ''Design-bid-build,'' ''Design-build'' and ''Two-phase Design-build'' to read as follows:

36.102 Definitions.

* * * * *

Design, as used in this part, means defining the construction requirement (including the functional relationships and technical systems to be used, such as architectural, environmental, structural, electrical, mechanical, and fire protection), producing the technical specifications and drawings, and preparing the construction cost estimate.

Design-bid-build, as used in this part, means the traditional method of construction contracting, where design and construction are sequential and contracted for separately with two contracts and two contractors.

Design-build, as used in this part, means combining design and construction in a single contract with one contractor.

* * * * *

Two-phase design-build, as used in this part, is one type of *design-build* construction contracting in which a limited number of offerors (normally five or fewer) is selected during Phase One to submit detailed proposals for Phase Two (See subpart 36.3).

7. Section 36.104 is added to read as follows:

36.104 Policy.

(a) Contracting officers are authorized to use any of the following methods, as appropriate, when contracting for construction:

(1) Design-bid-build;

(2) Design-build, including—

(i) Two-phase design-build, as authorized by 10 U.S.C. 2305a and 41 U.S.C. 253m (see subpart 36.3);

(ii) For DOD, the design-build process described in 10 U.S.C. 2862;

(3) Any other acquisition process authorized by law.

(b) When awarding contracts using the methods in paragraph (a) of this section, contracting officers may use the procedures established in this and other parts, including parts 14 and 15.

36.213 Special procedures for sealed bidding in construction contracting.

8. A new section heading for 36.213 is added to read as set forth above.

36.213–1 through 36.213–4 [Redesignated from 36.301 through 36.304]

9. 36.301 through 36.304 are redesignated as 36.213–1 through 36.213–4 respectively.

36.214 Special procedures for price negotiation in construction contracting.

10. 36.402 is redesignated as 36.214 and the heading is revised to read as set forth above.

36.215 Special procedures for cost-reimbursement contracts for construction.

11. 36.403 is redesignated 36.215 and the heading is revised to read as set forth above.

Subpart 36.3–Two-phase Design-build Contracting for Construction [Revised]

12. Subpart 36.3 is revised to read as follows:

Subpart 36.3—Two-Phase Design-Build Contracting for Construction.

Sec.
36.300 Scope of subpart.
36.301 Use of two-phase design-build method.
36.302 Scope of work.
36.303 Procedures.
36.303–1 Phase one.
36.303–2 Phase two.

36.300 Scope of subpart.

This subpart prescribes policies and procedures for the use of the two-phase design-build method for construction contracting authorized by 10 U.S.C. 2305a and 41 U.S.C. 253m.

36.301 Use of two-phase design-build method.

(a) During formal or informal acquisition planning (see part 7), if considering the use of two-phase design-build, the contracting officer shall conduct the evaluation in paragraph (b) of this section.

(b) The two-phase design-build method shall be used when the contracting officer determines that this method is appropriate, based on the following—

(1) Three or more offers are anticipated;

(2) A substantial amount of design work will be performed by offerors before developing price or cost proposals, that may result in offerors incurring substantial expenses in preparing offers; and

(3) The following criteria have been considered:

(i) The extent to which the project requirements have been adequately defined;

(ii) The time constraints for delivery of the project;

(iii) The capability and experience of potential contractors;

(iv) The suitability of the project for use of the two-phase selection procedures;

(v) The capability of the agency to manage the two-phase selection process; and

(vi) Other criteria established by the head of the contracting activity.

36.302 Scope of work.

The agency shall develop, either in-house or by contract, a scope of work that defines the project and states the Government's requirements. The scope of work may include criteria and preliminary design, budget parameters, and schedule or delivery requirements. If the agency contracts for development of the scope of work, the procedures in subpart 36.6 shall be used.

36.303 Procedures.

One solicitation may be issued covering both phases, or two solicitations may be issued in sequence. Proposals will be evaluated in Phase One to determine which offerors will submit proposals for Phase Two. One contract will be awarded using competitive negotiation.

36.303–1 Phase one.

(a) Phase One of the solicitation(s) shall include—

(1) The scope of work;

(2) The phase-one evaluation factors including—

(i) Technical approach (but not detailed design or technical information;

(ii) Specialized experience and technical competence;

(iii) Capability to perform;

(iv) Past performance of the offeror's team (including the architect-engineer and construction members); and

(v) Other appropriate factors (excluding cost or price related factors, which are not permitted in Phase One);

(3) Phase-two evaluation factors; and

(4) A statement of the maximum number of offerors that will be determined to be in the competitive range and invited to submit phase-two proposals. The maximum number specified shall not exceed five unless the contracting officer determines, for the particular solicitation, that a number greater than five is in the Government's interest and is consistent with the purposes and objectives of two-phase design-build contracting.

(b) After evaluating phase-one proposals, the contracting officer shall determine the competitive range of most highly qualified offerors (not to exceed the maximum number specified in the solicitation in accordance with 36.303–1(a)(4) and request that only those offerors in the competitive range submit phase-two proposals. The requirement in 15.609 that cost or price be considered in the determination of the competitive range does not apply.

36.303–2 Phase two.

Phase Two of the solicitation(s) shall:

(a) Be prepared in accordance with part 15, including phase-two evaluation factors, developed in accordance with 15.605, and

(b) Require the submission of separate technical and price proposals, that shall be evaluated separately, in accordance with part 15.

Subject 36.4—[Removed and Reserved]

13. Subpart 36.4 is removed and reserved.

[FR Doc. 96–20012 Filed 8–6–96; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 12, 15, 16, 25, 31, 46, and 52

[FAR Case 96–306]

RIN 9000–AH16

Federal Acquisition Regulation; Exception to Requirement for Certified Cost or Pricing Data

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to implement Section 4201 of the Federal Acquisition Reform Act of 1996. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before October 7, 1996, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAR case 96–306 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 96–306.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule implements changes to the Truth in Negotiations Act (TINA) contained in Section 4201 of the Federal Acquisition Reform Act of 1996 (Public Law 104–106).

The proposed rule:

- Simplifies obtaining a TINA exception for commercial items by eliminating the distinction between catalog or market-priced commercial items and all other commercial items;
- Eliminates the subordination of the commercial item exception to the traditional exceptions of adequate price competition, catalog or market-priced commercial items, or prices set by law or regulation, which previously was required by the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) (FASA);
- Eliminates the criteria established by FASA for the commercial item exception (i.e., an exception could not be granted unless price reasonableness could be determined based on specific information requirements) and deletes the authority to obtain cost or pricing data for commercial item acquisitions when the criteria is not met; and
- Eliminates the clause for postaward audit of information submitted to support the pricing of commercial item contracts.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it is estimated that most contracts awarded to small entities are awarded on a competitive, fixed-price basis and do not require the submission of ''cost or pricing data.'' An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601 *et seq.* (FAR case 96–306), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public 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 Parts 4, 12, 15, 16, 25, 31, 46 and 52:

Government procurement.

Dated: July 31, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 4, 12, 15, 16, 25, 31, 46 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 12, 15, 16, 25, 31, 46 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

4.702 [Amended]

2. Section 4.702 is amended by removing paragraph (a)(3).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.209 [Amended]

3. Section 12.209(e) is amended in the first sentence by removing ''15.804–1(b)(6)'' and inserting ''15.804–1(b)(5)'' in its place.

PART 15—CONTRACTING BY NEGOTIATION

4. Section 15.106 is revised to read as follows:

15.106 Contract clause.

(a) This section implements 10 U.S.C. 2313, 41 U.S.C. 254d, and OMB Circular No. A–133.

(b) The contracting officer shall, if contracting by negotiation, insert the clause at 52.215–2, Audit and Records—Negotiation, in solicitations and contracts except those—

(1) Not exceeding the simplified acquisition threshold in part 13;

(2) For commercial items exempted under 15.804–1; or

(3) For utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.

(c) In facilities contracts, the contracting officer shall use the clause with its Alternate I. In cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II. If the examination of records by the Comptroller General is waived in accordance with 25.901, the contracting officer shall use the clause with its Alternate III.

15.106–1 [Amended]

5. Section 15.106–1 is removed.

15.106–2 [Amended]

6. Section 15.106–2 is removed.

15.802 [Amended]

7. Section 15.802 is amended in the third sentence of paragraph (a) introductory text by removing ''(b)'', and in (a)(1) by removing ''(a)(3)'' and inserting ''(b)'' in its place.

8. Section 15.804–1 is amended by revising paragraph (a); removing (b)(2); redesignating (b)(3) through (b)(6) as (b)(2) through (b)(5), respectively, and

revising newly designated (b)(3) and (b)(5); and by removing paragraphs (c) and (d). The revised text reads as follows:

15.804–1 Prohibition on obtaining cost or pricing data.

(a) *Exceptions to cost or pricing data requirements.* The contracting officer shall not, pursuant to 10 U.S.C. 2306a and 41 U.S.C. 254b, require submission of cost or pricing data (but may require information other than cost or pricing data to support a determination of price reasonableness or cost realism)—

(1) If the contracting officer determines that prices agreed upon are based on—

(i) Adequate price competition (see exception standards at paragraph (b)(1) of this subsection; or

(ii) Prices set by law or regulation (see exception standards at paragraph (b)(2) of this subsection).

(2) For acquisition of a commercial item (see exception standards at paragraph (b)(3) of this subsection).

(3) For exceptional cases where a waiver has been granted (see exception standards at paragraph (b)(4) of this subsection).

(4) For modifications to contracts or subcontracts for commercial items, if the basic contract or subcontract was awarded without the submission of cost or pricing data because the action was granted an exception from cost or pricing data requirements under paragraph (a)(1) or (a)(2) of this subsection and the modification does not change the contract or subcontract to a contract or subcontract for the acquisition of other than a commercial item (see exception standards at paragraph (b)(5) of this subsection).

(b) * * *

(3) *Commercial items.* If an acquisition is for an item that meets the commercial item definition in 2.101, it is excepted from the requirement to obtain cost or pricing data.

* * * * *

(5) *Modifications.* This exception applies when the original contract or subcontract was exempt from cost or pricing data based on adequate price competition, price set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item (15.804–1 (a)(1) or (a)(2)). For modifications of contracts or subcontracts for commercial items, the exception at 15.804–1(a)(4) applies if the modification does not change the item from a commercial item to a noncommercial item. However, if the modification to a contract or a subcontract changes the nature of the work under the contract or subcontract either by a change to the commercial item or by the addition of other noncommercial work, the contracting officer is not prohibited from obtaining cost or pricing data for the changed or added work.

15.804–2 [Amended]

9. Section 15.804–2 is amended in the second sentence of paragraph (a)(1) introductory text, by removing ''15.804–1(b)(5)'' and inserting ''15.804–1(b)(4)''; and in (a)(1)(ii) by removing ''15.804–1(b)(5)'' and inserting ''15.804–1(b)(4)'' in its place; and by revising paragraph (a)(2) as follows:

15.804–2 Requiring cost or pricing data.

(a) * * *

(2) Unless prohibited because an exception at 15.804–1(a)(1) or (a)(2) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this subsection provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for cost or pricing data. The documentation shall include a written finding that cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

* * * * *

10. Section 15.804–5 is revised to read as follows:

15.804–5 Requiring information other than cost or pricing data.

(a) *General.* (1) If cost or pricing data are not required because an exception applies, or an action is at or below the cost or pricing data threshold, the contracting officer shall perform a price analysis to determine the reasonableness of the price and any need for further negotiation.

(2) The contracting officer shall require submission of information other than cost or pricing data only to the extent necessary to determine reasonableness of the price or cost realism. Unless an exception under 15.804–1(a)(1) applies, the contracting officer shall obtain at a minimum, in accordance with the policy at 15.802(a)(2), appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price.

(3) The contractor's format for submitting such information shall generally be used (see 15.804–5(c)(2)).

(4) The contracting officer shall ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists. Such data shall not be certified in accordance with 15.804–4.

(b) *Adequate price competition.* When an acquisition is based on adequate price competition, generally no additional information is necessary to determine the reasonableness of price. However, if it is determined that additional information is necessary to determine the reasonableness of the price, the contracting officer shall, to the maximum extent practicable, obtain the additional information from sources other than the offeror. In addition, the contracting officer may request information to determine the cost realism of competing offers or to evaluate competing approaches.

(c) *Limitations relating to commercial items.* (1) Requests for sales data relating to commercial items shall be limited to data for the same or similar items during a relevant time period.

(2) The contracting officer shall, to the maximum extent practicable, limit the scope of the request for information relating to commercial items to include only information that is in the form regularly maintained by the offeror in commercial operations.

(3) Any information obtained relating to commercial items that is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)) shall not be disclosed by the Government.

11. Section 15.804–6 is amended in paragraph (a)(5) by removing the words ''or postaward'' and in Table 15–2 by revising the fourth paragraph of Item 1 entitled ''Established Catalog or Market Prices or Prices Set by Law or Regulation or Commercial Items Not Covered By Another Exception'' to read as follows:

15.804–6 Instructions for submission of cost or pricing data or information other than cost or pricing data.

* * * * *

TABLE 15–2 INSTRUCTIONS FOR SUBMISSION OF A CONTRACT PRICING PROPOSAL WHEN COST OR PRICING DATA ARE REQUIRED

* * * * *

Prices Set by Law or Regulation or Commercial Item Exception—When an exception from the requirement to submit cost or pricing data is requested, whether the item was produced by

others or by the offeror, provide justification for the exception.

* * * * *

12. Section 15.812–1 is amended by revising paragraph (b) and the fourth sentence of (c) to read as follows:

15.812–1 General.

* * * * *

(b) However, the policy in paragraph (a) of this subsection does not apply to any contract or subcontract for acquisition of a commercial item.

(c) * * * The information shall not be requested for commercial items. * * *

13. Section 15.812–2 is amended by revising paragraphs (a)(3) and (5); and adding (a)(6) to read as follows:

15.812–2 Contract clause.

(a) * * *

(3) Utility services under part 41;

* * * * *

(5) Acquisitions of commercial items; and

(6) Contracts for petroleum products.

* * * * *

PART 16—TYPES OF CONTRACTS

14. Section 16.203–4 is amended by revising paragraphs (a)(1)(ii) and (b)(1)(ii) to read as follows:

16.203–4 Contract clauses.

(a)(1) * * *

(ii) The requirement is for standard supplies that have an established catalog or market price.

* * * * *

(b)(1) * * *

(ii) The requirement is for semistandard supplies for which the prices can be reasonably related to the prices of nearly equivalent standard supplies that have an established catalog or market price.

* * * * *

PART 25—FOREIGN ACQUISITION

25.901 [Amended]

15. Section 25.901(b) is amended in the first sentence by removing ''15.106–1(b)'' and inserting ''15.106(b)'' in its place.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

16. Section 31.205–26 is amended by revising paragraph (f) to read as follows:

31.205–26 Material costs.

* * * * *

(f) When a commercial item under paragraph (e) of this subsection is transferred at a price based on a catalog or market price, the price should be adjusted to reflect the quantities being acquired and may be adjusted to reflect the actual cost of any modifications necessary because of contract requirements.

PART 46–QUALITY ASSURANCE

46.804 [Amended]

17. Section 46.804 is amended by removing ''(see 15.804–1(b)(2))''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.215–2 [Amended]

18. Section 52.215–2 is amended in the introductory text by removing ''15.106–1(b)'' and inserting ''15.106(b)'' and in Alternates I, II and III remove ''15.106–1(c)'' and add ''15.106(c)'' in its place.

19. Section 52.215–26 is revised to read as follows:

52.215–26 Integrity of Unit Prices.

As prescribed in 15.812–2, insert the following clause:

Integrity of Unit Prices (Date)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) The Offeror/Contractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value when requested by the Contracting Officer.

(c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts other than those for the acquisition of commercial items.

(End of clause)

Alternate I (DATE). As prescribed in 15.812–2(b), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Offeror/Contractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value.

20. Section 52.215–41 is amended by revising the clause, the clause date, and Alternates II and III to read as follows:

52.215–41 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.

* * * * *

Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (Date)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include—

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price or recent sales in quantities similar to the proposed quantities.

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(C) For items included on an active Federal Supply Service or Information Technology Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price.

Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15–2 of FAR 15.804–6(b)(2).

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of

Current Cost or Pricing Data, as prescribed in FAR 15.804–4.

(End of provision)

* * * * *

Alternate II (DATE). As prescribed in 15.804–8(h), add the following paragraph (c) to the basic provision:

(c) When the proposal is submitted, also submit one copy each, including the SF 1411 and supporting attachments, to (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (DATE). As prescribed in 15.804–8(h), add the following paragraph (c) to the basic provision (if Alternate II is also used, redesignate as paragraph (d)):

(c) Submit the cost portion of the proposal via the following electronic media: (Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.).

* * * * *

21. Section 52.215–42 is amended by revising the clause, the clause date, and the last sentence in paragraph (b) of Alternate IV to read as follows:

52.215–42 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.

* * * * *

Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications (Date)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.804(a)(1) on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable:

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) Information on modifications of contracts or subcontracts for commercial items.

(A) If (*1*) the original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item, and (*2*) the modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include:

(*1*) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(*2*) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(*3*) For items included on an active Federal Supply Service or Information Technology Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15–2 of FAR 15.804–6(b)(2).

(2) As soon as practical after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804–4.

(End of clause)

* * * * *

Alternate IV (Date) * * *

* * * * *

(b) * * * *Standard Form 1448, Proposal Cover Sheet (Cost or Pricing Data Not Required), may be used for information other than cost or pricing data.)*

52.215.43 [Removed]

22. Section 52.215–43 is removed.

23. Section 52.216–2 is amended by revising the introductory paragraph, the clause date, and the third sentence in paragraph (a) to read as follows:

52.216–2 Economic Price Adjustment—Standard Supplies.

As prescribed in 16.203–4(a), insert the following clause. The clause may be modified by increasing the 10 percent limit on aggregate increases specified in subparagraph (c)(1), upon approval by the chief of the contracting office.

Economic Price Adjustment—Standard Supplies (Date)

(a) * * * The term ''established price'' means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, and (2) is the net price after applying any standard trade discounts offered by the Contractor.

24. Section 52.216–3 is amended by revising the introductory paragraph, the clause date and the second sentence of paragraph (a) to read as follows:

52.216–3 Economic Price Adjustment—Semistandard Supplies.

As prescribed in 16.203–4(b), insert the following clause. The clause may be modified by increasing the 10 percent limit on aggregate increases specified in subparagraph (c)(1), upon approval by the chief of the contracting office.

Economic Price Adjustment—Semistandard Supplies (Date)

(a) * * * The term ''established price'' means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, and (2) is the net price after applying any standard trade discounts offered by the Contractor. * * *

* * * * *

[FR Doc. 96–20013 Filed 8–6–96; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Wednesday
August 7, 1996

Part III

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2510

Regulation Relating to Definition of ''Plan Assets''—Participant Contributions; Final Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA53

Regulation Relating to Definition of ''Plan Assets''—Participant Contributions

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation revising the definition of when certain monies which a participant pays to, or has withheld by, an employer for contribution to an employee benefit plan are ''plan assets'' for purposes of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) and the related prohibited transaction provisions of the Internal Revenue Code (the Code). The final regulation provides that participant contributions to employee pension benefit plans become plan assets on the earliest date that they can reasonably be segregated from the employer's general assets, but in no event later than the 15th business day of the month following the month in which the participant contributions are withheld or received by the employer. The final regulation establishes a procedure by which an employer that sponsors a pension plan may obtain an extension of this maximum period for an additional 10 business days with respect to participant contributions received or withheld in a single month. With respect to employee welfare benefit plans only, the final regulation leaves unchanged the current regulation, which provides that participant contributions become plan assets as of the earliest date on which they can reasonably be segregated but in no event later than 90 days from the date on which the participant contributions were received or withheld by the employer. This rule provides guidance to employers that sponsor contributory pension and welfare plans, including plans complying with section 401(k) of the Code, as well as fiduciaries, participants, and beneficiaries of such plans.

DATES: *Effective date.* This regulation is effective on February 3, 1997.

Applicability dates. The regulation also establishes a procedure by which an employer may obtain a postponement of the application of the new maximum period for pension plans for up to 90 additional days beyond the effective date. For collectively bargained plans, the new maximum period for pension plans does not apply until the later of February 3, 1997 or the first day of the plan year that begins after the last to expire of any applicable collective bargaining agreement in effect on August 7, 1996. Pending the application of the new maximum period for pension plans, plans are subject to the same maximum period that applies to employee welfare benefit plans. Except as described above with respect to the postponement procedure and collectively bargained plans, the requirements of the regulation are applicable to all plans on the effective date.

FOR FURTHER INFORMATION CONTACT: Rudy Nuissl, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC (202) 219–7461; or William W. Taylor, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC (202) 219–9141. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On December 20, 1995, the Department of Labor (the Department) published a notice of proposed rulemaking in the Federal Register (60 FR 66036) to revise a regulation at 29 CFR 2510.3–102 which had been issued by the Department in 1988. The 1988 regulation provided that the assets of the plan include amounts (other than union dues) that a participant or beneficiary pays to an employer, or amounts that a participant has withheld from his or her wages by an employer, for contribution to the plan as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets, but in no event to exceed 90 days from the date on which such amounts are received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or 90 days from the date on which such amounts would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).[1] This final rule was based on a record developed with respect to a proposed regulation published in 1979. 44 FR 50363 (August 28, 1979).

In the December 20, 1995 notice, the Department proposed to change the maximum period during which participant contributions to an employee benefit plan may be treated as other than ''plan assets'' to the same number of days as the period in which the employer is required to deposit withheld income taxes and employment taxes under rules promulgated by the Internal Revenue Service (IRS). The Department solicited comments on the advisability of other measures that the Department might consider to address the problem of delays in transmitting participant contributions to plans. The Department received more than 600 written comments in response to the proposal. The Department held a public hearing on the proposal on February 22 and 23, 1996, in Washington DC, at which time 21 organizations provided testimony.

The following discussion summarizes the Department's proposal and the major issues raised by the commenters. It also explains the Department's reasons for the modifications reflected in the final regulation which is published with this document.

Discussion of the Final Regulation and Comments

1. The Proposed Regulation

In issuing the proposed rule the Department stated that it did not propose to change the general rule embodied in the 1988 regulation, which is that participant contributions become plan assets as of the earliest date that they can reasonably be segregated from the general assets of the employer. Instead, the Department's proposal emphasized that the maximum time period was not a safe harbor, and proposed to drastically reduce the maximum period after which participant contributions would be considered plan assets. Under the 1988 regulation, this maximum period was 90 days after the contributions were received by the employer or would otherwise have been payable to the participants in cash. The Department proposed to change the maximum period to the same number of days as the period within which the employer is required to deposit withheld income taxes and employment taxes under rules promulgated by the IRS.

The currently applicable IRS rules are codified at 26 CFR 31.6302–1. As explained in the preamble to the December 20, 1995 notice of proposed rulemaking, the IRS deposit rules generally require employers who have

[1] The Department's view is that elective contributions to an employee benefit plan, whether made pursuant to a salary reduction agreement or otherwise, constitute amounts paid to or withheld by an employer (*i.e.*, participant contributions) within the scope of § 2510.3–102, without regard to the treatment of such contributions under the Internal Revenue Code. See 53 FR 29660 (Aug. 8, 1988).

reported more than $50,000 of withheld income taxes and employment taxes for a prior 12-month ''lookback'' period (defined as ''semi-weekly depositors'') to make tax deposits to a Federal Reserve Bank or authorized financial institution within a few days of withholding from wages. Employers who have reported $50,000 or less of withheld income taxes and employment taxes in the lookback period are defined as ''monthly depositors'' and must make such deposits on or before the 15th day of the month following the month in which the employees' wages are paid. The Department specifically solicited comments on the appropriateness of including in the final regulation the following two special rules that supplement the general tax deposit rules in the IRS regulation: (1) An employer who has accumulated on any day $100,000 in withheld income taxes and employment taxes must deposit such taxes by the next banking day; (2) an employer who accumulates less than a $500 tax liability during a calendar quarter is not required to make deposits; the tax is paid with the filing of the tax return for the quarter.

The Department recognized that some employers would perceive difficulties in transferring participant contributions to an employee benefit plan that they do not have in the deposit of federal employment taxes. The Department solicited comments as to any specific burdens and associated costs of this kind. The Department also requested comments on the transition period needed for employers and service providers, especially small businesses, to make changes in practices that would be necessary to comply with the proposal if it was adopted.

Although the Department did not propose a maximum period applicable to all employers based on a fixed period of days (such as 15 days), it stated in the December 20, 1995 notice that it would consider such a rule if adopting the time periods in the IRS tax deposit rules would place an undue burden on plan sponsors. The Department solicited comments on the advantages or disadvantages of using a fixed period of days or some other formulation for a maximum period as well as to the advisability of other measures to address the problem of delays in transmitting participant contributions to plans.

2. Comments Addressed to the Maximum Period Described in the Proposed Regulation

In response to the proposed regulation, the Department received many comments[2] objecting to the use of the time periods that apply for the deposit of withheld income taxes and employment taxes as the maximum period for segregating participant contributions from the employer's general assets. Employers of different sizes represented that they would face difficulty and greatly increased costs in attempting to meet the foreshortened time frames for segregation of participant contributions set forth in the proposal. Service providers to plans stated that it would not be feasible for them to administer a rule that had a different maximum time period based on the size of the employer. There was general agreement that the 90 day maximum period in the 1988 regulation should be reduced, but many commenters regarded the proposed regulation as formulating an overly restrictive maximum period with the effect of imposing more stringent requirements on larger employers even though, they contended, most of the cases in which participant contributions were mishandled appear to have involved smaller employers.

The commenters generally represented that, under current practices, there are significant differences between the processing of withheld federal income taxes and employment taxes prior to deposit, and the processing of participant contributions to employee benefit plans. Tax deposits are made without providing any data regarding the allocation of the deposit amounts to individual employees until the end of the year. By contrast, commenters stated that each time participant contributions are transmitted to the plan, eligibility must be confirmed, contributions must be allocated to the participants' individual accounts, and the individual amounts must be reconciled to the aggregate amount. Commenters also pointed out that employees who participate in 401(k) plans may select differing amounts for contribution, and may frequently change both these amounts and the vehicles to which they are allocated.

Many commenters represented that the process of reconciling and allocating participant contribution amounts is time consuming. Because of the work involved in preparing for the transmission of participant contributions to the plan, many commenters stated that they customarily make such transmissions once a month, rather than after each pay period. The commenters stated that requiring participant contributions to be segregated as often as twice a week or more would force employers to conduct these reconciliations and allocations with the same frequency and thus would add substantially to the costs and burdens of handling participant contributions.

Other commenters maintain that the proposal would simply not allow sufficient time for the necessary review and correction of errors before the transmission of the participant contributions to the plans. These commenters pointed out that accuracy in calculating and allocating participant contributions is very important. Although some commenters acknowledged that mistakes can be corrected, including the return of mistaken contributions, frequent mistakes can present significant employee relations problems and undermine participant confidence. According to numerous commenters, it is less burdensome and costly to take additional time to assure the accuracy of participant contributions before they are transmitted to the plan than it is to find and correct mistakes afterwards. They pointed out that the more frequently reconciliation and allocation computations are made, the greater the opportunity for committing errors.

The commenters also represented that many brokerage houses, banks and mutual funds are not willing to accept lump sum payments of participant contributions from employers without at the same time receiving instructions as to the allocation of such amounts to the participants individual accounts. Some commenters also stated that investment vehicles would not be willing to accept participant contributions more frequently than once a month, even with appropriate individual participant data, without increased charges. In addition, some commenters stated that the proposal would present particular problems for plans that have participant accounts valued on a daily basis.

Smaller employers represented that they use outside service providers to assist in plan management. For such employers, participant contribution data is transmitted to the service provider and then back to the employer as part of the reconciliation process before the contributions are transmitted to the plan. It was also represented that many smaller employers handle their own payroll and participant contribution processing but lack sophisticated automation systems for this work. It was represented that, because of these factors, many smaller employers would

[2] References to ''comments'' and ''commenters'' includes both written comment letters as well as prepared statements and oral testimony at the public hearing.

have difficulty meeting the outside limits set forth in the proposed rule.

A few very large companies with sophisticated computer payroll systems indicated that they could comply with the proposed regulation. Many large companies, however, especially those with employees at various locations and decentralized payroll systems, represented that additional time is needed for processing payroll information from different locations. One commenter pointed out that the deposit schedules in the proposal would present difficulties for companies that are members of control groups. Employers which have multiple payrolls with varying cut-off dates stated that the proposal would seriously increase their costs. For such employers, the proposed rule would impede the more economical consolidation of contribution data from different payrolls into large batches for processing. Instead, it would require the processing of smaller amounts of data on an almost continuous basis.

Employers who must comply with the ''next banking day'' rule for deposits of withheld income taxes and employment taxes informed the Department that the proposed rule would not be administratively feasible because the transmission of participant contributions is far more labor intensive and time consuming than the deposit of payroll taxes. Moreover, some employers may become subject to this special deposit rule only when they have unusually large payrolls, such as when they pay large bonuses to employees.

Many commenters recognized that participant contributions could be segregated quickly and frequently into a trust established to temporarily hold participant contributions until they could be reconciled in a more practical and less costly manner. Some of these commenters, however, represented that the costs of establishing and administering a separate trust would be considerable, outweighing any additional earnings gained from using a trust, and would not be justified by the additional benefits they might produce.[3] Some commenters provided calculations to support their claim that any additional earnings derived from more frequent deposits of participant contributions, either to individual accounts or to a holding trust, would be more than offset by the increased attendant expenses.

Some commenters expressed concern that fiduciaries of participant directed plans designed in accordance with the Department's regulations at 29 CFR 2550.404c–1 would not be relieved of liability under ERISA section 404(c) for management of money deposited in these separate holding trusts. The commenters stated that requiring plan fiduciaries to manage assets of such plans is contrary to the purpose of plans designed to comply with section 404(c), which is to permit the participants to exercise control over the assets allocated to their individual accounts.

3. Comments Relating to Welfare Plans

A number of commenters recommended that the 1988 regulation remain unchanged as applied to assets of employee welfare benefit plans. Others proposed that participant contributions to welfare plans not be treated as plan assets unless the contributions are deposited with a trust. According to these commenters, welfare plan participants would derive very little benefit from application of the proposed regulation to their contributions because participant contributions to most welfare plans, particularly health benefit plans, are not meant to be invested, but are used to purchase coverage (such as medical or disability coverage or life insurance) for a given period of time, either directly from the employer in the self-insured context, or through a state-regulated insurer. For such plans, the commenters argued, there is no need to determine when or if participant contributions become plan assets because the coverage is immediately available to the participant and all the assets of the employer or of the insurer are available for the payment of the benefits under the plan. Several commenters also maintained that for many welfare plans, especially health benefit plans, the participant contributions merely reimburse the employer for expenditures on benefits or premiums that the employer has already made.

The Department does not agree that the concept of participant contributions becoming plan assets as soon as they can reasonably be segregated from the employer's general assets has no relevance to welfare plans. In the view of the Department, employees who agree to deductions from their wages for contributions to a plan are entitled to have the assurance that when the employer decides to purchase an insurance policy or medical services for the plan, it is acting as a fiduciary of the plan and is governed by the fiduciary standards of ERISA in so doing. The fact that the participant contributions may be used to repay an employer for advancing funds for the plan's expenses does not, in the view of the Department, change the character of the participant contributions. Moreover, if participant contributions to a welfare plan are not promptly devoted to benefits and expenses, the prudence and exclusive purpose requirements of ERISA may require that the contributions be invested.

In addition, the Department, in issuing the proposed regulations, did not contemplate a change in the general rule that participant contributions to pension and welfare plans become plan assets as of the earliest date on which they can reasonably be segregated from the employer's general assets. Nor were comments solicited on alternatives to the general rule. A change in the general rule is thus beyond the scope of this rulemaking. The Department, however, does not believe that the record is sufficient to support a change in the maximum time period for welfare plans. As a result, the Department has determined not to change the current maximum period of 90 days with respect to welfare plans.

The Department has recognized that for cafeteria plans and certain other types of welfare plans, the trust and certain reporting requirements of ERISA present special burdens. As a result, the Secretary issued a technical release, T.R. 92–01, which provides that the Department will not assert a violation of the trust or certain reporting requirements in any enforcement proceeding, or assess a civil penalty for certain reporting violations involving such plans solely because of a failure to hold participant contributions in trust. 57 FR 23272 (June 2, 1992); 58 FR 45359 (Aug. 27, 1993). Several commenters sought assurance that the promulgation of this regulation does not affect the continued validity of the technical release. The Department wishes to provide such assurance. T.R. 92–01 is not affected by the final regulation contained in this document, and remains in effect until further notice.

COBRA payments were the subject of a number of comments.[4] The record indicates that participants and beneficiaries generally make COBRA payments in the form of separate checks, usually made out to the employer, and which arrive at different

[3] Some commenters assume that such earnings must be allocated to the participants' individual accounts. This is not necessarily so. A plan may provide that the earnings will be used to defray reasonable plan expenses.

[4] COBRA payments are made for continuation of coverage under certain group health plans pursuant to provisions of ERISA and the Internal Revenue Code that were enacted as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

times over the course of each month. Commenters stated that such payments contain a high rate of errors and that the reconciliation process regarding eligibility and amount is time consuming. One commenter alleged that welfare plans that use third party service providers to receive and aggregate participant contributions, including COBRA payments, before they are applied to plan purposes need a minimum of 45 days before the participant contributions should be treated as plan assets. Because the Department has determined not to change the existing regulation as it applies to welfare benefit plans, the Department has determined not to create a special rule for COBRA payments or for welfare plans that use a third party service provider to receive participant contributions.

With regard to the continued application of T.R. 92–01, some commenters questioned whether the technical release extended relief to plans which receive COBRA contributions. It is the view of the Department that the mere receipt of COBRA contributions or other after-tax participant contributions (e.g., retiree contributions) by a cafeteria plan would not by itself affect the availability of the relief provided for cafeteria plans in the technical release. Similarly, in the case of other contributory welfare plans, the mere receipt of after-tax contributions by a plan would not affect the availability of relief under the technical release provided that such contributions are applied only to the payment of premiums in a manner consistent with 29 CFR 2520.104–20(b)(2)(ii) or (iii) or 2520.104–44(b)(1)(ii) or (iii).

4. The Final Regulation

After consideration of the comments and hearing testimony, the Department has decided to modify the outside limit set forth in the proposal. Under the final regulation, the general rule of the 1988 regulation remains unchanged for both pension and welfare benefit plans: The assets of a plan include amounts paid by a participant or withheld by an employer from a participant's wages as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets. The final rule changes only the outer limit beyond which participant contributions to employee pension benefit plans become plan assets. The 1988 regulation had an outer limit of 90 days from the date of withholding from a participant's wages or from the payment of the contribution by the participant to the employer. The final regulation has an outer limit for pension benefit plans of the 15th business day of the month immediately following the month in which the participant contributions are received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the 15th business day of the month following the month in which such amounts would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages). Under the final rule the outside limit for welfare benefit plans is the same time period as in the 1988 regulations, 90 days from the date of the employer's withholding or receipt of the participant contributions.

Substantially all of the commenters who addressed the issue advocated a uniform maximum time period for all employers, large and small. The maximum period for pension benefit plans contained in the final regulation is slightly longer than the alternative by far the most often proposed by commenters, which was 15 days after the end of the month in which the participant contributions were received. Comment letters received from a wide range of employers, third party administrators, trustees and investment vehicles for plans indicated that a 15 day rule would not impose undue costs or burdens, or otherwise require them to change their current processes for handling participant contributions. A comment recommended that the number of days be measured in business days rather than calendar days. Because the Department realizes that, for many employers, holidays and weekends reduce the total number of days in which employers can perform the functions necessary to segregate participant contributions from their general assets in an orderly and cost efficient manner, the Department has decided to adopt a maximum period measured by business days rather than calendar days (i.e., excluding Saturdays, Sundays and national legal holidays).

The final rule for pension benefit plans accommodates employers who are unable reasonably to segregate participant contributions from their general assets more frequently than in what appears to be a fairly standard monthly processing cycle for participant contributions to pension plans. The new rule thus should not increase the costs and burdens for the great majority of employers who sponsor pension benefit plans. In addition, as requested by most commenters, the rule would apply to all such employers, regardless of size, and would simplify the compliance monitoring function performed by service providers and the Department.

At the same time, the final rule significantly reduces the maximum period during which participant contributions to pension benefit plans may be treated as other than plan assets (assuming that the participant contributions could not reasonably be segregated from the employer's general assets in a shorter time). Under the final rule, the maximum period in which employers could commingle participant contributions to pension benefit plans with their general assets would average about 35 days and would be no more than 52 days. Thus, in comparison to the 1988 regulation, the final rule enhances the security of employee retirement benefits that are funded in whole or in part through participant contributions.

The final rule does not change the requirement of the 1988 rule that participant contributions become plan assets as of the earliest date that they can reasonably be segregated from the employer's general assets. Under the final rule this general requirement remains applicable to both pension and welfare benefit plans. The final rule also retains the emphasis of the proposed rule that the maximum period does not operate as a safe harbor for either pension or welfare benefit plans. As a result, for many plans, participant contributions will become plan assets well in advance of the applicable maximum period.

Although the Department believes that the final regulation establishes a maximum period that is sufficiently long to accommodate the needs of employers that sponsor pension plans, employers who are complying with the general rule, on occasion, may be unable to transmit participant contributions to the plan within the maximum period. To accommodate such a situation, the regulation includes a procedure for an employer to extend the maximum period for an additional 10 business days with respect to participant contributions for a single month. Under this procedure, the employer must provide a true and accurate written notice to the participants that the employer has elected to take advantage of this extension period for the month. The notice must also state the reasons why the employer cannot reasonably segregate the participant contributions within the maximum time period for pension plans, and state that the participant contributions in question have in fact been transmitted to the plan and provide the date of such transmission. The notice must be provided within 5 business days after the end of the extension period. In addition, the employer must have

obtained, prior to the beginning of the extension period a performance bond or irrevocable letter of credit in favor of the plan. Within 5 business days after the end of the extension period, a copy of the notice provided to the participants must also be provided to the Secretary along with a certification that the notice was distributed to the participants and that the bond was obtained.[5]

The amount of the bond or letter of credit must be not less than the amount of the participant contributions received or withheld by the employer during the previous month. The Department is concerned that in some cases, the reasons prompting the employer to elect an extension under this procedure may recur in the immediately following months and, if so, might put the participant contributions at risk of loss. In addition, because the extensions will not be subject to prior approval by the Department, the Department has determined that the bond or letter of credit must remain in effect for at least three months following the month in which the extension period expires in order to give the Department sufficient time to confirm that the participant contributions were actually transmitted to the plan as represented in the notice.

The regulation provides that an employer may not elect an extension under this procedure more than twice in any plan year, unless the employer pays to the plan an amount representing interest on the participant contributions that were subject to all the extensions within the plan year. The interest amount is to be measured by the greater of (1) the amount that the participant contributions would otherwise have earned from the date of withholding or receipt by the employer until the date of transmission to the plan if the contributions had been invested during such period in the investment alternative available under the plan which had the highest rate of return, or (2) the underpayment rate defined in section 6621(a)(2) of the Internal Revenue Code applied to such period.

The Department emphasizes that the extension procedure is available only to extend the maximum period and has no effect on the employer's obligation to comply with the general rule that participant contributions become plan assets as soon as they can reasonably be segregated from the employer's general assets. The Department also notes that this extension procedure applies only with respect to participant contributions to pension plans; it does not apply with respect to participant contributions to welfare plans.

5. Comments Recommending Alternative Approaches

a. Other Maximum Time Periods

Many commenters recommended other maximum time periods. One commenter recommended a maximum period of the 25th day of the month following the month in which the employer withheld or received the participant contributions. A significant number recommended that the maximum period be the 30th day of the month following the month in which the employer withheld or received the participant contributions. A few recommended a maximum period of 60 days after the date of withholding or receipt by the employer. Others suggested a maximum period of 45 days after the date of withholding or receipt. Several commenters recommended maximum time periods of less than 15 days after participant contributions were withheld or received by the employer. Nearly all employers who make monthly transmissions of participant contributions to plans and who provided information concerning their current practices indicated that they transmit participant contributions to plans within several days after the end of the month in which the participant contributions are withheld or received.

The final rule, which provides a maximum period of 15 business days after the end of the month in which the employer withheld or received the participant contributions for pension plans, provides additional time for the resolution of errors or for other unforeseen delays. In light of the above, the Department believes that the final regulation provides a sufficient maximum time for employers who are not able reasonably to segregate participant contributions from their general assets and transmit them to pension plans more often than once a month.

b. Extended Maximum Time Periods When There is a Change in Trustees

Some commenters recommended that the Department provide an extended maximum period for situations where the employer changes recordkeepers or plan trustees for section 401(k) plans. One recommended that the maximum period in this situation should be the end of the third month following withholding of the participant contributions. Another commenter suggested that a rule allowing a maximum period ending on the last day of the month following the month in which the contribution is made would accommodate this situation. According to these commenters, additional time is often needed to accomplish a smooth changeover of recordkeeping and trustee functions from one party to another. The commenters, however, did not provide any detailed information as to why participant contributions could not be directed to one trust or the other during this time period. The final regulation does not contain an extended maximum period for special situations. The Department recognizes that a change in trustees or funds for a section 401(k) plan may require a period during which the outgoing fund or trustee cannot accept contributions and the participants are unable to direct changes in investment choices or contribution amounts. The Department, however, believes participant contributions should be transmittable to the new fund or trustee within the maximum time provided. In the Department's view, a change in recordkeepers or other service providers to a plan should not affect the maximum allowable period before participant contributions become plan assets. In addition, the extension procedure would be available to an employer who was complying with the general rule but, due to a change of trustees, needed a brief extension of the maximum period.

c. Administrative Waivers

Other commenters suggested that, in the event that the regulation provided a maximum period of less than 30 days after the end of the month in which the contribution is received, the Department should provide a procedure for obtaining waivers of the maximum period. These comments fall into two categories. The first category of comments asserts that certain employers may not be able to segregate participant contributions within the outside time limitation for reasons unique to the company, but the employer is nonetheless transmitting participant contributions to the plan as soon as they may reasonably be segregated from the employer's general assets and should be able to petition the Department for a waiver of the limitation. The second category of comments asserts that employers who would ordinarily remit participant contributions to the plan within the maximum period may sometimes miss the limit because they are changing trustees, or because of other factors, such as computer failures, erratic mail delivery, and employee illness.

[5] Such copy shall be addressed to: Participant Contribution Regulation Extension Notification, Office of Enforcement, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

With respect to the first category of comments, the Department believes that it has provided a sufficiently delayed effective date to enable the small percentage of employers who cannot currently transmit participant contributions to pension plans within 15 business days after the end of the month in which the employer received the contribution to change their practices to come into conformity with the regulation without incurring undue expense. Nevertheless, as described in the discussion of the effective date, the final regulation includes a procedure by which an employer who is complying with the general rule may obtain a postponement of the application of the maximum period for pension plans for up to 90 additional days beyond the effective date. This optional postponement will allow such employers additional time to make necessary changes in their operations to be able to comply with the final rule.

With respect to the second category of comments, the Department believes that the maximum period established by the final regulation is sufficiently long to accommodate most unanticipated events.[6] With respect to events beyond the control of the employer, the Department notes that a predicate for a prohibited transaction under section 406(a) is that the fiduciary cause the plan to engage in the prohibited transaction in question. Therefore, if the event giving rise to the delay in segregating participant contributions is, in fact, beyond the control of the employer, there would be no prohibited transaction under section 406(a). Nevertheless, as explained more fully above, in the discussion of the final regulation, the Department decided to provide a procedure by which an employer who was complying with the general rule may, on occasion, obtain a brief extension of the maximum time period for pension plans.

d. Special Rule for Simplified Employee Pensions

Two commenters stated that the proposed rule was particularly inappropriate as applied to simplified employee pensions that allow participants to elect salary reduction contributions. Although such plans are available only to employers with less than 26 employees, the commenters maintained that many sponsors of SEPs would be semi-weekly depositors. According to these comments, some SEPs allow participants to designate their own custodians and the sponsor must make separate payments to the custodian for each participant's account. The comments state that the amount deferred for a given pay period is often very small, and may well be less than the minimum deposit amount permitted by the custodian. One of these commenters recommended that, for SEPs, the time period should be 15 days from the earlier of (1) any pay period in which the largest single accumulated participant contribution exceeded $1,000, (2) the earliest date on which the total of all accumulated participant contributions exceeded $5,000, or (3) two months from the last contribution.

The Department has determined not to create a special rule for SEPs. The great majority of commenters, including third party fiduciaries, stated that it is important to have a single rule for all employers. The final rule would permit sponsors of SEPs to remit participant contributions as infrequently as once a month, if necessary. This should allow the remission of amounts sufficiently large to be accepted by custodians of SEPs.

e. Maintain the 90 day Maximum Time Period

Some commenters expressed the opinion that the 1988 regulation should remain unchanged. Many of these commenters stated that the abuses against which the proposed regulation is directed could be better addressed by non-regulatory measures. Foremost among such recommended measures was stricter enforcement efforts to identify and correct violations. Given the Department's broad enforcement responsibilities, the Department has concluded it would not be practical to rely entirely on enforcement efforts to address the abuses at issue here. The Department seeks, by reducing the maximum period during which participant contributions may be treated as other than plan assets, to reduce the amount of participant contributions that are at risk because they have not yet been deposited in trust. Participant contributions which have not been transmitted to a pension plan run two types of risk: interest lost due to delay in depositing contributions, and loss of the contributions themselves if the employer becomes bankrupt. These risks may result in sizeable losses. Through July 1, 1996, the Department's enforcement actions against 401(k) plan sponsors have retrieved $10.01 million in plan assets on behalf of participants and beneficiaries. While the Department's non-regulatory efforts have made a difference in the safeguarding of pension plans, the growth in the number of plans with participant contributions (including 401(k) plans) has made it infeasible, given the scarcity of Departmental resources, to audit or advise every plan that warrants correction. In these circumstances, the Department believes that publishing new guidelines is the appropriate and efficient method of improving pension safety.

Other commenters suggested that improving disclosure of information to participants would obviate the need for a shorter maximum period by allowing participants to better monitor their employer's handling of participant contributions. The Department believes that the establishment of meaningful and timely disclosure requirements in this area would require legislative changes to ERISA. Furthermore, imposing such requirements on employers or plans may impose a burden on them, particularly with respect to small plans that do not use third party administrators already offering this disclosure. The Department considered a suggestion that it offer enhanced disclosure as an option for smaller plans who could not reasonably segregate plan assets within the maximum period in the final regulation, but concluded that such an option may be costly for employers and plans and could be difficult to administer.

As described above, however, the Department has determined not to change the maximum 90 day period with respect to participant contributions to welfare benefit plans.

6. Other Comments

a. Comments Relating to General Rule

Several commentators suggested that the existing rule that amounts that a participant or beneficiary pays to a plan or has withheld from his wages by an employer for contribution to a plan become plan assets as of the earliest date on which such amounts can reasonably be segregated from the employer's general assets be replaced by a fixed time safe harbor. Others suggested that the existing rule be replaced by a rule that such amounts become plan assets as of the earliest date that it would be administratively feasible to transmit the assets to the plan.

The rationale generally set forth by the commenters for proposing the elimination of the rule that participant contributions become plan assets as of the earliest date on which they can reasonably be segregated from the employer's general assets is that it is difficult to determine with exactitude as to when that date is and that the rule,

[6] Where, for example, an employer mails a check to the plan, the Department is of the view that the employer has segregated participant contributions from plan assets on the day the check is mailed to the plan, provided that the check clears the bank.

if it means that participant contributions become plan assets as soon as they can be mechanically segregated from the employer's general assets, is costly and burdensome. The commenters who advocated changing the rule to state that participant contributions become plan assets as of the earliest date that it would be administratively feasible to transmit such contributions to the plan also appear to be reading the existing rule as meaning that participant contributions become plan assets as soon as they can be mechanically segregated from the employer's general assets.

After consideration of these comments, the Department has determined not to change the existing general rule. As indicated in the preamble to the proposed regulation, the Department did not propose to change the existing rule. The test remains as stated in the preamble to the 1988 regulation:

> The revised general rule relating to participant contributions is intended to reflect a balancing of the costs of promptly transmitting such contributions to the plan relative to the protections provided to participants by such transfers. In formulating the final regulation, the Department has attempted to remain consistent with one of the key purposes of the trust requirement of section 403(a) of ERISA—the segregation of plan assets so as to prevent commingling of such assets with an employer's own property.
>
> The regulation is not intended, however, to allow employers to use participant contributions for their own purposes. The Department is concerned that participant contributions be paid promptly into the plan so as to begin earning interest or other investment return and to be available for the payment of benefits. Employers should examine their current payroll procedures to ascertain whether they are indeed transmitting participant contribution amounts at the earliest reasonable time. (53 FR 17629, May 17, 1988)

b. Comments Relating to Fiduciary Duties

Several commenters urged that the Department indicate its position with respect to the fiduciary duties of the institutional trustee which receives contributions. They stated that, typically, the standard form of trust agreement provides that the trustee is accountable only for funds actually deposited and that, in their view, the trustee has no obligation to collect contributions. One commenter acknowledged that while the institutional trustee which receives contributions does not have any primary duty to enforce payment of contributions, section 405(a)(3) of ERISA imposes a fiduciary duty to remedy the breaches of other fiduciaries of which it has knowledge, but stated that a trustee would not necessarily have sufficient information to determine when there has been such a breach with respect to timely deposit of employee contributions. Finally, one commenter who receives employee contributions from many sponsors of 401(k) plans stated its belief that ''each service provider has a fiduciary responsibility to plan participants to blow the whistle on the abusers,'' and stated that its service agreement ''specifies that we will contact the Department of Labor if contributions are not made at least once a month.''

Although it is the view of the Department that the plan sponsor (usually the employer) is primarily responsible for assuring that participant contributions are transmitted to the trustee in a timely manner, section 405(a)(3) would impose a fiduciary duty on plan trustees in certain circumstances.[7] Delineating those circumstances is beyond the scope of this rulemaking.

c. Partnerships

Two comments were received relating to when contributions by partners to section 401(k) plans become plan assets. The letters represent that, under 26 CFR 1.401(k)–1(a)(6)(ii), a partner's compensation is deemed currently available on the last day of the taxable year, and an individual partner must make an election by the last day of the year. They ask when the monies, which otherwise would be paid to a partner, but for the partner's election, become plan assets, inasmuch as partners do not receive wages. In the view of the Department, the monies which are to go to a section 401(k) plan by virtue of a partner's election become plan assets at the earliest date they can reasonably be segregated from the partnership's general assets after those monies would otherwise have been distributed to the partner, but no later than 15 business days after the month in which those monies would, but for the election, have been distributed to the partner.

d. Bankruptcy Laws

Two commenters recommended that the Department seek to have the bankruptcy laws amended to provide a preference for participant contributions commingled with the employer's general assets. One commenter stated that such contributions should be elevated to the same priority as earned payroll. Because such a change cannot be accomplished through the Department's regulatory authority, these recommendations are beyond the scope of this rulemaking.

e. Participant Loans

Clarification was requested from a commenter that the time periods applicable to determining when participant contributions become plan assets also apply to determining when repayments of participant loans that are withheld or received by the employer become plan assets. Another commenter stated that monies withheld for repayment of participant loans should be afforded at least 90 days after withholding because many plans provide for quarterly repayment of loans.

The question of when participant loan repayments become plan assets is beyond the scope of this rulemaking. The notice of proposed rulemaking did not solicit comments on this matter. The record is insufficient for the Department to address this matter in the final regulation. In the Department's view, however, employers should promptly transmit participant loan repayments to plans. An employer's failure to transmit loan payments within a reasonable time after withholding or receiving them could subject the employer to liability for violations of the same provisions of ERISA and criminal law that are violated when an employer is delinquent in forwarding participant contributions to plans.

f. Bonding

Several commenters suggested that many of the problems with which the Department is concerned could be addressed by requiring that the withheld wages and participant contributions be covered by ERISA's bonding requirements prior to their transmittal to the plan. While this suggestion may have some merit with respect to safeguarding participant contributions from losses due to acts of fraud and dishonesty, it would not protect against participant contribution losses where fraud or dishonesty could not be shown. This is because the bond required under section 412 of ERISA (29 U.S.C. 1112) protects the plan only against acts of fraud or dishonesty. However, participant losses due to an employer's failure to quickly segregate participant contributions arise from numerous causes, of which provable acts of fraud or dishonesty are a relatively minor factor. In addition, it would require an amendment to the Department's existing bonding

[7] For the Department's views of the obligations imposed on a fiduciary by section 405(a)(3) in another situation, see 29 CFR 2509.75–5, Q&A FR–10.

regulations,[8] which currently require bonding with respect to participant contributions made by withholding from employees' salaries only at the point in time when they are segregated from the employer's general assets within the meaning of 29 CFR 2580.412–5. Such an amendment is beyond the scope of this regulation.[9]

g. Maritime Employers

Two commenters stated that the proposed regulation would present particularly difficult compliance problems for maritime employers. According to these commenters, participant contributions for 401(k) plans in this industry are commonly not transmitted to the plan until the end of the voyage in which the participant earned the amount of the contribution. Such voyages may last several months. The comments did not focus on when wages are withheld for transmission to the plan. If the wages are not withheld until the end of the voyage, the maximum period within which the withheld wages must be transmitted would begin at the end of the voyage. If the wages were withheld during the course of the voyage, the Department does not perceive any reason why the employer cannot remit such withheld wages to the plan within the same maximum period as any other employer.

h. Multiemployer Plans

Several commenters argued that, because of the unique nature of multiemployer plans, in that the plan trustees are independent of any individual employer, the regulation should either entirely exempt elective contributions to multiemployer plans from its provisions or exempt such contributions from the maximum period provision. The commenters noted, however, that the collective bargaining agreements governing most multiemployer plans provide for transmittal of such contributions from the employer to the plan within a fixed period, typically between 10 and 20 days after the month in which such contributions are made. The Department determined that the maximum time period for pension plans in the final regulation was sufficient to accommodate multiemployer plans and determined not to create a special rule or exemption for multiemployer plans. At the same time, and as more fully explained below in the discussion of the effective date, the Department recognized that transmission of participant contributions may be controlled by collective bargaining agreements and has addressed the special nature of collectively bargained plans, including multiemployer plans, in connection with the applicability of the new maximum period for pension plans in the final regulation.

7. Dues Financed Plans

The final regulation leaves undisturbed the effect of the 1988 regulation on amounts paid to employee organizations as union dues. It continues to be the Department's position that amounts paid as union dues should not be characterized as participant contributions merely because a portion of such dues might be used to provide benefits under a welfare or pension plan sponsored by the employee organization.

8. Consequences of Treatment of Participant Contributions as Plan Assets Before Transmission to the Plan Trustee

a. ERISA

Once participant contributions become plan assets, they become subject to the trust requirements of ERISA section 403, 29 U.S.C. 1103. Although ERISA section 403(b) contains a number of exceptions to the trust requirement for certain types of assets, including assets which consist of insurance contracts, and for certain types of plans, participant contributions generally must be held in trust by one or more trustees once they become plan assets. ERISA section 403(a), 29 U.S.C. 1103(a). Although the Secretary has authority, pursuant to ERISA section 403(b)(4), to grant exemptions for welfare plans, including health plans, from the trust requirements, this exemptive authority does not extend to most pension benefit plans. As noted above, the Secretary has issued a technical release, T.R. 92–01, which provides that, with respect to certain welfare plans (e.g., cafeteria plans), the Department will not assert a violation of the trust or certain reporting requirements in any enforcement proceeding, or assess a civil penalty for certain reporting violations, involving such plans solely because of a failure to hold participant contributions in trust. 57 FR 23272 (June 2, 1992), 58 FR 45359 (Aug. 27, 1993). As a result, except for plans which come within T.R. 92–01, an employer's failure to transmit participant contributions to a plan trustee or investment manager by the applicable period described in the final regulation may subject the employer to liability under ERISA for failure to hold plan assets in trust.

In addition, ERISA's fiduciary responsibility provisions apply to the management of plan assets. An employer who retains plan assets commingled with its general assets would be exercising ''authority or control respecting the management or disposition of [plan] assets'' and would be a fiduciary with respect to those assets pursuant to ERISA section 3(21)(A)(i). Among other things, ERISA's fiduciary responsibility provisions make clear that the assets of a plan may not inure to the benefit of any employer and shall be held for the exclusive purpose of providing benefits to participants in the plan and their beneficiaries, and defraying reasonable expenses of administering the plan. ERISA sections 403–404, 29 U.S.C. 1103–1104. Fiduciaries who violate these provisions are personally liable to the plan to, among other things, make good losses resulting from such violations and to restore to the plan any profits of such fiduciary which have been gained through the use of plan assets. ERISA section 409(a), 29 U.S.C. 1109(a).

ERISA's fiduciary responsibility provisions also prohibit certain transactions involving plan assets. ERISA sections 406–407, 29 U.S.C. 1106–1107. In particular, ERISA section 406(a)(1)(D), 29 U.S.C. 1106(a)(1)(D), provides that a plan fiduciary shall not cause the plan to engage in a transaction if he knows or should know that such transaction constitutes a direct or indirect transfer to, or use by, or for the benefit of a party in interest of any assets of the plan. The employer of employees covered by the plan is a party in interest with respect to the plan. ERISA section 3(14)(C), 29 U.S.C. 1002(14)(C). Violations of ERISA's prohibited transaction provisions subject the fiduciaries and parties in interest to liability for the plan's losses and other relief. In the case of pension plans qualified under the Code, the parties in interest (referred to as disqualified persons) are subject to excise taxes under IRC section 4975. In the case of other employee benefit plans, particularly welfare plans, the parties in interest are subject to civil penalties under ERISA section 502(i), 29 U.S.C. 1132(i).

b. Criminal Law

As was noted in the preamble to the final regulation published in 1988, the Department of Justice takes the position that, under 18 U.S.C. 664, the embezzlement, conversion, abstraction, or stealing of ''any of the moneys, funds, securities, premiums, credits, property, or other assets of any employee welfare

[8] See 29 CFR 2580.412.

[9] T.R. 92–1 does not extend to the enforcement of the bonding requirements of ERISA.

benefit plan or employee pension benefit plan, or any fund connected therewith'' is a criminal offense, and that under such language, criminal prosecution may go forward in situations in which the participant contribution is not a plan asset for purposes of title I of ERISA. As with the 1988 regulation, the final regulation defines when participant contributions become ''plan assets'' only for the purposes of title I of ERISA and the related prohibited transaction excise tax provisions of the Internal Revenue Code. The Department reiterates that this regulation may not be relied upon to bar criminal prosecutions pursuant to 18 U.S.C. 664.

Similarly, State criminal laws may apply when an employer converts participant contributions to the plan to the employer's own use. Although the provisions of ERISA generally supersede State laws that relate to employee benefit plans covered by title I of ERISA, generally applicable State criminal laws are not preempted. ERISA section 514(b)(4), 29 U.S.C. 1144(b)(4). This regulation may not be relied upon to bar criminal prosecutions under such generally applicable State laws.

9. Effective Date of the Final Regulation

The effective date of this regulation is February 3, 1997. The Department received relatively few comments addressing the appropriateness of the proposed delayed effective date of 60 days after the adoption of the final regulation, although the Department specifically requested comments on this matter. Of those comments received, the bulk of the comments addressing the effective date recommended a one year delay if the proposed regulation was adopted without significant change as a final rule, although several organizations serving 401(k) plans indicated that a 180-day period would not be inappropriate. However, most of the comments and hearing testimony indicated that there would be little or no difficulty for the vast majority of employers to meet the maximum period adopted in the final rule for participant contributions to 401(k) plans. Some commenters stated that while only a small percentage of employers would have difficulty meeting the maximum period adopted in the final rule, they would need a full year to change their processing systems.

The Department believes that the effective date for the regulation has been sufficiently delayed to accommodate the needs of those employers who will need to make significant changes in their payroll or other systems in order to comply with the final regulation. Nevertheless, the Department has determined to provide a procedure to allow employers who are complying with the 1988 regulation to obtain up to an additional 90 days postponement of the application of the new maximum period for pension plans. Under this procedure, prior to the effective date of the regulation, an employer must provide a true and accurate written notice to the participants that the employer has elected to postpone the application of the new maximum period for pension plans, and providing the date that the postponement will expire. The notice must also describe the reasons why the employer cannot reasonably segregate the participant contributions within the maximum time period for pension plans.

At the same time, the employer must obtain a performance bond or irrevocable letter of credit in favor of the plan in an amount not less than the total participant contributions withheld or received by the employer during the previous three months. The bond or letter of credit must be guaranteed by a government supervised bank or similar institution. The Department is concerned that in some cases, the reasons prompting the employer to elect a postponement under this procedure may recur in the immediately following months and, if so, might put the participant contributions at risk of loss. Because the postponements will not be subject to prior approval by the Department, the Department has also determined that the bond or letter of credit must remain in effect for at least three months following the month in which the postponement expires. A copy of the notice provided to the participants must also be provided to the Secretary along with a certification that the notice was distributed to the participants and that the bond was obtained.[10]

Finally, for each month in which the postponement is in effect, the employer must provide a true and accurate notice to the participants stating the date on which participant contributions received or withheld by the employer during that month were transmitted to the plan. This notice must be distributed so as to reach the participants within 10 days after the transmission. While the postponement is in effect with respect to a particular plan, the participant contributions to the plan will be subject to the same maximum period under the final regulation that applies to employee welfare benefit plans.

Many commenters representing organized labor and employer organizations pointed out that a rule requiring a change in a provision governed by a collectively bargained plan may require renegotiation of the collective bargaining agreement. These commenters also noted that the drafters of ERISA recognized the special needs of collectively bargained plans by providing special effective dates for collectively bargained plans with respect to ERISA's participation, vesting and funding provisions.[11] They asked that the Department provide a special postponement of the application of the maximum period for collectively bargained plans. The Department believes that the comments have merit and has provided for a postponement of the application to collectively bargained plans of the new maximum period for pension plans. Under the final regulation, the maximum period for pension plans does not apply to collectively bargained plans until the later of (1) the effective date or (2) the first day of the plan year that begins after the expiration of the last to expire of any applicable bargaining agreement in effect when the final regulation is issued. During this period of postponement of applicability, the maximum period for welfare plans in the final regulation will apply to collectively bargained plans.

Economic Analysis Conducted in Accordance With Executive Order 12866 and OMB Guidelines

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Department must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in, among other things, a rule raising novel policy issues arising out of the President's priorities. Pursuant to the terms of the Executive Order, the Department has determined that this regulatory action is a ''significant regulatory action'' as that term is used in Executive Order 12866 because the action would raise novel policy issues arising out of the President's priorities. Thus, the Department believes this notice is ''significant,'' and subject to OMB review on that basis.

[10] Such copy shall be addressed to: Participant Contribution Regulation Extension Notification, Office of Enforcement, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC 20210.

[11] See ERISA sections 211(c)(1) and 308(c)(1), (29 U.S.C. sec. 1061(c)(1) and 1086(c)(1)).

Costs

In connection with the publication of the proposed regulation the Department solicited comments on potential economic effects of the proposed rule in the context of Executive Order 12866, and any evidence with respect to whether or not the proposed rule might be ''economically significant.'' The Department received many comments regarding the additional costs and burdens that would have attended the proposed regulation. Some commenters asserted that there would be increased costs but did not provide data and information to explain their assertions. The Department assumed that the information provided in the record by those who did set forth data is reflective of the additional costs which others would incur.

The Department estimated compliance costs of the plan asset regulation set forth in this notice by utilizing information placed in the record and Departmental data on industry practices.[12] Costs are separated into initial costs and ongoing costs.[13] Initial costs represent up-front expenditures for plan revisions, reprogramming, and other one-time costs; these costs were annualized over a conservative estimate of the ''life'' of the regulation, 10 years, in order to show such costs on an annual basis. Ongoing expenditures incurred annually include additional audits for those plans which need to create supplemental trust accounts, and the cost of performing administrative tasks more frequently. Total annualized initial costs and ongoing costs were aggregated to estimate total annual costs.

The plan asset regulation as originally promulgated in 1988 provides that participant contributions become plan assets as soon as they may reasonably be segregated from the employer's assets. The regulation is now being modified to shorten the maximum length of time employers would have to treat participant contributions to pension plans as other than plan assets under Title I of ERISA from 90 days after these contributions were withheld or submitted, to 15 business days after the end of the month in which the contributions were withheld or submitted. Therefore, the costs of this regulatory action are limited to the costs associated with bringing into compliance those employers that are not remitting participant contributions to pension plans within 15 business days after the close of the month.[14]

Compliance costs were estimated using information from commenters on current practices and analysis of Form 5500 annual report data to develop an estimate of the number of plans out of compliance with the revised regulation. The present value (using a 7 percent real discount rate) of the cost of compliance expressed in constant 1995 dollars ranges from $17 million for 1996 costs to $9 million for 2005 costs, totalling $107 million over the 1996–2005 period, and with a value expressed as a constant annuity of $15 million per year over ten years. Comments and survey data in the record supplied information on how different sponsors would have different burdens associated with coming into compliance, reflecting different payroll practices. Many witnesses testified that they would incur no additional burden if the standard was revised to require deposit by the fifteenth day after the previous month's end. Some testified that they would have to change their payroll practices to come into compliance; others determined that they would have to redesign their payroll systems, or make use of a short-term interest bearing trust. Comments and testimony were received regarding financial institutions' practices, including fee structures; information on compliance rates was taken from Form 5500 data, as verified by survey data supplied in the record.[15]

Data analysis indicated that approximately 15,000 (in 1996) to 27,000 (in 2005) contributory pension plans would need to take steps to come into compliance with the new provisions on participant contributions. Of an estimated 239,000[16] pension plans which receive participant contributions, approximately 94[17] percent already deposit participant contributions within 15 business days after the end of the month in which contributions were withheld or paid.

In addition to the annual costs quantified above, other unquantified costs may be recognized by employers, plans and participants. For example, certain employers or plans may be unable to accommodate the changes required by this revised regulation, and consequently may conceivably offer a different type of pension plan, reduce the employer's contribution to the plan, or cease to offer any plan. However, the marginal cost of complying with the final regulation has not been conclusively shown to have a measurable effect on rates at which employers establish or terminate plans.

Benefits

Wages which are withheld for contribution to a plan are regarded by the Department as the property of the participant from the time when they would otherwise be payable to the participant directly. Delays in the transmittal of these funds into a trust result in lost earnings to the participant. PWBA estimates that $82 million will be gained in 1997 by participants and beneficiaries through the increased

[12] For the purposes of this analysis the Department referred to data collected from the Form 5500, the annual return/report filed by pension and welfare benefit plans. In addition, the analysis also makes use of results of surveys on participant contribution plans conducted by William M. Mercer, Incorporated, the Profit Sharing Council of America, and Bankers Trust Company contained in the record.

[13] Costs are estimated based on information submitted to the record both in the form of comment letters and testimony gathered at the public hearing held on February 22 and 23, 1996.

[14] The final rule does not change the requirement of the 1988 regulation that participant contributions become plan assets as of the earliest date that they can reasonably be segregated from the employer's general assets. The economic effects of these provisions were accounted for in the issuance of the 1988 regulation. Nevertheless, in estimating the economic effects of this regulation, the Department has included the costs to plans which should have been in compliance with the regulation as originally stated, as well as with this revised regulation, but are not currently in compliance because their administrators may have misunderstood the requirements of the regulation as published in 1988.

[15] The annual cost estimate is based on commenters' estimates of $6,000–$10,000 per plan per year for those that will establish and maintain a trust for holding participant contributions short term, $4,000–$6,000 per plan that will modify its participant contribution management systems to comply with the revised regulation (a first year only cost), and $600 per plan per year for those that will be required to increase the number of deposits of participant contributions to come into compliance. Some plans that already deposit on a monthly basis will have to accelerate their deposit schedules to comply with the 15 business day rule, but will not have to pay for additional transactions. The sources used were comment letters or testimony from Bankers Trust Company, National Fuel Gas Company, American Society of Pension Actuaries, Profit Sharing Council of America, Louis Kravitz, Berry Petroleum, and Southern Champion Tray Company.

[16] Form 5500 data from 1992 (the most recent year for which complete data is available) establishes that there are approximately 172,000 contributory pension plans subject to this regulation. Data for 1989–1992 and preliminary data for 1993 show an average annual increase of 22,000 in the number of contributory plans; assuming a continuation of this rate of growth yields an estimate of 239,000 contributory plans subject to this regulation in 1995. Linear extrapolation of this rate of growth yields an estimate of 461,000 plans in 2005.

[17] This estimate is based on an analysis of Form 5500 data utilizing 27,654 Form 5500 returns submitted for the 1992 plan year by contributory plans, which showed 5% of large plans out of compliance. Compliance rates of small plans were based on an analysis of the behavior of the smallest Form 5500 filers; it is estimated that 6% of small plans are out of compliance with the revised regulation. This analysis represents the higher end of the range of noncompliance rates based on survey data submitted by commentators, none of which had a sample size of more than 317, indicating a range of 2.5 to 8 percent of respondents are not in compliance with contribution date limits in this regulation.

earnings by having their contributions placed in trust at an accelerated rate.[18] The present value (using a 7 percent real discount rate) of the increased earnings on participant contributions expressed in constant 1995 dollars ranges from $76 million in 1997 to $69 million in 2005 totalling $661 million over the 1996–2005 period, and with a 10-year annuitized value of $94 million.[19] This estimate of these savings to participants, which are a result of earlier segregation, include what is effectively a transfer from employers, some of whom are in full compliance with the 1988 regulation and act properly under their fiduciary responsibilities.

In addition, PWBA believes that the revised regulation will reduce the likelihood that some participant contributions will be lost in bankruptcy proceedings by being placed in trust sooner, which will put these contributions out of reach of the sponsor's creditors,[20] with an estimated annual savings, stated as a 10-year annuitized value, to participants and beneficiaries of $4 million. Plans will receive additional saving to participants through the reduced likelihood of litigation (both from the Department and from private sources) due to the shortened maximum time limit. Many other savings to participants associated with the revised regulation, such as reduced anxiety among participants, improved goodwill of employees toward the plan sponsors, and increased pension savings rates, have not been quantified.

Based on information submitted to the record and the Department's data, the present value (using a 7 percent real discount rate) of the quantified benefits expressed in constant 1995 dollars ranges from $79 million in 1997 to $71 million in 2005, totalling $686 million over the 1996–2005 period, and with a 10-year annuitized value of $98 million. The present value (using a 7 percent real discount rate) of the net savings to participants expressed in constant 1995 dollars ranges from $69 million in 1997 to $62 million in 2005, totalling $579 million over the 1996–2005 period, and with a 10-year annuitized value of $83 million.[21] This projection of the net savings to participants includes what is effectively a transfer from employers some of whom are in full compliance with the 1988 regulation and act properly under their fiduciary responsibilities.

Non-Regulatory Alternatives

The Department examined non-regulatory approaches for promoting the prompt deposit of participant contributions into trust, including (1) increased enforcement efforts by the Department, (2) issuance of non-regulatory guidance, (3) educating participants on their rights, and (4) seeking legislative guaranty of the protection of participant contributions, as is done by the Pension Benefit Guaranty Corporation for defined benefit plan assets. The increased enforcement approach advocated by a number of comments is more fully addressed above in the discussion of such comments.

Using its non-regulatory authority, the Department recently announced a voluntary compliance program (61 FR 9203, March 7, 1996) and a complementary class exemption (61 FR 9199, March 7, 1996) to encourage plan sponsors who are delinquent in submitting participant contributions to make their plans whole. This initiative, known as the Pension Payback Program, is targeted at persons who failed to transfer participant contributions to pension plans within the timeframes mandated by regulation. Those who comply with this program will avoid ERISA civil actions initiated by the Department, the assessment of civil penalties under ERISA section 502(l), and related Federal criminal prosecutions. The Department has received the cooperation of the Department of Justice and the IRS in creating this program.

The Department has undertaken both an enforcement initiative and a pension education campaign. One of the results of these two initiatives was the demonstration of the need for a modified plan asset regulation. An improved plan asset regulation will reduce the significant risk to the pension assets of American workers caused by certain employers' failure to modify their performance of their own accord. While most plan sponsors have used technological improvements to accelerate the date upon which participant contributions are placed in trust, the failure of some plan sponsors to adopt improved industry procedures in the years since the promulgation of the original plan asset regulation has resulted in reduced retirement savings or actual losses for their employees.[22] While some elements of the 401(k) industry voluntarily police employer transmittal of participant contributions[23], this appears to be rare, and thus fails to provide adequate protection for employees' retirement contributions. Therefore, the Department has determined that revision of the 1988 regulation is necessary to provide greater protection against loss of pension income.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions; under ERISA, a ''small plan'' is one with less than 100 participants. ERISA section 104(a)(2), 29 U.S.C. 1024 (a)(2).

This notice describes the economic impact that the changes to the existing regulation on participant contributions will have on small entities. A summary of the analysis for this finding follows; these points are explained in greater detail above:

(1) The Department is promulgating this regulation because it believes that modifying the regulatory guidance in this area is necessary to better protect the security of participant contributions to pension benefit plans. Reducing the maximum period during which participant contributions may be treated as other than plan assets is expected to reduce the amount of plan contributions that are at risk because they have not yet been deposited in trust. This regulation preserves the existing rule that

[18] This figure was reached by multiplying the additional number of days funds will be in trust by the portion of the estimated $63.7 billion (in 1997) in annual participant contributions that would be deposited earlier by an annual rate of return. A 2.1 percent annual real rate of return was used for contributions deposited by those large plans which place funds in short-term interest bearing trusts. A 10.1 percent real rate of return was used for contributions deposited by the remainder of the large plans and the small plans, representing an estimate of the rate of return of 401(k) funds held in trust.

[19] Although the Department expects plan sponsors to incur costs in 1996 in anticipation of the final regulation's effective date in 1997, the Department has assumed that no savings to participants will accrue in 1996.

[20] Several commenters recommended that the Bankruptcy Code be amended to exclude participant contributions from the bankrupt employer's estate. Such an amendment would require legislation and is beyond the scope of this regulation.

[21] The costs and savings to participants resulting in the use of the postponement of applicability and extension procedures are not included here. It is expected that the incidence of utilization of these procedures will be so minimal as to have no measurable or material effect on aggregate costs and benefits.

[22] This is demonstrated by the interim results of the enforcement initiative: over $10.01 million has been recovered for contributory pension plans and their participants.

[23] For example, a prominent third party administrator states in its contract that it will notify the Department of Labor's enforcement personnel should participant contributions become overdue.

participant contributions become plan assets as soon as they can reasonably be segregated from the plan sponsor's general assets. Under the 1998 regulation, this maximum period of time is 90 days from the date of withholding from a participant's wages or from the payment of the contribution by the participant to the employer; under the revised regulation, this date is the 15th business day of the month following the month in which the contribution would have been payable to the participant. The revised regulation provides that the maximum time period applicable for pension plans may be extended upon meeting certain conditions specified in the regulation. The rule has not been changed for welfare benefit plans.

(2) The proposed regulation requested comments on the initial regulatory flexibility analysis and from small entities regarding what, if any, special problems they anticipate they may encounter if the proposal were to be adopted, and what changes, if any, could be made to minimize these problems. In excess of half of the comments received were received from small entities, their representatives, or businesses that provide employee benefit services to small employers. Comments received included concern about the increased administrative costs associated with the need for an increased number of transactions, that employers would respond to the increased costs by avoiding establishing or terminating plans, and that costs would be passed on to employees. Commenters also expressed concern that inaccuracies in the reconciliation of accounts could be introduced by the number of transactions and short time provided to contribute in the proposed regulation. Two-thirds of the comments received from small businesses, third party administrators, or their representatives recommended that contributions to pension plans be made by the 15th day of the month following the month of withholding. Some commenters recommended other time periods, such as 30 to 60 days from the day of withholding, or the last day of the month following the month of withholding. It was also suggested that Department pursue a course of increased enforcement rather than alter the regulation. A few commenters suggested that the effective date be delayed, in some instances up to a year. Five commenters suggested that a waiver or exemption procedure be established. Most of the commenters did not distinguish between maximum periods for compliance for large and small entities. Some commenters, particularly service providers to small plans, advocated that the same rule apply to large and small entities. Only three comments recommended that a different period for transmittal be provided for large and small entities. Other comments received requested special consideration for COBRA payments or Simplified Employee Pensions (SEPs) (available only to employers with fewer than 26 employees). A few commenters suggested that a bonding or disclosure option be included as an alternate form of compliance.

The Department believes that most of the comments expressing concern about increased administrative costs were in response to the time frames provided in the NPRM for transmittal of withheld contributions to the plan. Commenters generally indicated that additional time was needed for transactions and reconciliations of accounts. Most small entities found that a fifteen day maximum period for transmittal of contributions would address their concerns. The provisions setting the maximum period at 15 business days address the concerns of those plans that requested additional time for compliance (including SEPs). Based on the comments and testimony received, the Department decided not to determine the maximum period based on the size of the plan (as was proposed), but did change the maximum period based on the type of plan, i.e., the outer limit for welfare benefit plans was not changed. Provisions permitting an extension of time to comply with the regulation were included for entities that would, on occasion, have difficulty meeting the maximum time period of the regulation, and for those entities that would have difficulty revising their benefits systems prior to the effective date of the regulation.

Based on the comments received, including many from small employers and the businesses that provide payroll and plan administration services to them, it was determined that there should be a single outer limit, rather than a tiered regulation providing less rigid alternatives for small plans. However, to the extent that the provisions for extensions of time respond to small plan concerns, those procedures may be considered an alternative form of compliance.

(3) Of the estimated 283,000 pension plans that will receive participant contributions subject to the regulation (in 1997), an estimated 245,800 are small plans (plans with less than 100 participants). Based on Form 5500 filings and comments received on the proposed regulation, only six percent (14,748) will not be in compliance with the revised regulation, and will therefore have to change their practices to comply with the new standard. Testimony and comments also indicate that a high percentage of small plans already act in compliance with the revised standard. No small governmental jurisdictions will be affected.

(4) In response to specific requests from employers, including small employers, the Department is establishing procedures for extension of the maximum time period for transmittal of contributions. The disclosure and bonding provisions in the procedure provide an alternative to plans that find compliance with the maximum period for pension plans to be burdensome. The projected reporting, recordkeeping and other compliance requirements of these procedures are described below. The professional skills necessary for meeting these requirements are those expected to be available to small plans in their ordinary course of business.

(5) To the extent that small plan concerns have not been met by setting the maximum period at 15 business days, several alternatives which could minimize the impact on small entities have been identified, and have been included in this final regulation. These alternatives include a procedure allowing for a postponed application of the new maximum period for pension plans, and a procedure allowing for an occasional longer maximum period for transmittal of contributions, with heightened disclosure and bonding requirements. In order to achieve the Department's policy objectives, these alternative procedures require significant safeguards for the security of participants' contributions. It would be inappropriate to create an alternative with lower compliance criteria, or an exemption under the proposed regulation, for small plans because those are the entities which pose a higher degree of risk of loss due to the delay in depositing participant contributions into trust. The need for improved compliance by small plans is demonstrated by the Department's findings, through its employee contribution investigations, that of closed 401(k) plan cases with monetary recovery, 75% of these cases involved plans with fewer than 100 participants.

It should be noted that the Department's proposed regulation created three tiers of compliance, based on the size of payroll. However, the overwhelming majority of the comments, including those from representatives of small plans,

specifically opposed that approach, asking that a single compliance schedule remain in effect. Moreover, from the comments received, it appears that creating a less stringent outside limit exclusively for small plans might prove more costly because outside service providers would then have to maintain two sets of software and protocols, reducing economies of scale. The additional costs would be passed on to their clients, including small plans.

In addition, many of the reasons set forth in the comments for having alternative forms of compliance are based on the proposed regulation, which had significantly more rigid time frames for compliance. Because the requirements of the final regulation were drafted in response to those comments, it is the Department's belief that most of the concerns of small businesses have been addressed in a manner favorable to them.

This modification of the existing plan asset regulation does not eliminate protections already provided by the rule, but simply reduces the outside limit on the existing rule to enhance compliance in light of improved technology, thereby further improving employee protections.

The Department believes that it has minimized the economic impact of the revised regulation on small entities in accordance with the Regulatory Flexibility Act, while accomplishing the objectives of ERISA.

Paperwork Reduction Act

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed new collection of the Notice of Extension of Time for Compliance with 29 C.F.R. 2510.3–102.

Written comments must be submitted on or before October 7, 1996. The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Address comments to Mr. Gerald B. Lindrew, U.S. Department of Labor, PWBA/OPLA, Room N–5647, 200 Constitution Avenue, N.W., Washington, DC 20210, telephone 202–219–4782 (this is not a toll-free number).

I. Background

In response to comments received regarding the revised regulation below, it was deemed appropriate to offer an optional procedure for those plans that would incur difficulty or undue expense in complying with the deadlines of the regulation. This notice-and-bonding procedure serves as an alternate form of compliance while protecting the security of the participant contributions to pension plans and providing the Department with adequate notice of the plans' actions.

II. Current Actions

The collection has two components: the first provides a 90 day extension of time for plans that cannot comply with the revised regulation prior to the effective date of the regulation. This effectively gives those plans 270 days to comply. The second component extends the maximum time period under paragraph (b) by ten business days.

In order to comply with one of these options, notice must be provided to the participants of the plan, a performance bond or irrevocable letter of credit at least equal to the amount of participant contributions at risk must be secured, and the Department must be given a copy of the notice and certification that the notice was sent and the bond was secured.

Based on past experience, the staff believes that none of the materials required to be submitted under the procedure for postponement of application of the maximum period for pension plans will be prepared by the respondents; rather, the respondents are expected to contract with service providers such as attorneys, accountants, and third-party administrators to prepare the materials. Therefore, the Department has inserted one hour as a placeholder for the estimated burden, in light of the current requirements that time spent by service providers not be included in the hourly burden estimate, but rather as a cost. The annual cost of using service providers for this collection of information is estimated to be $249,000 in the first year only. In contrast, because the Department believes that those respondents who seek an extension of the maximum period are likely to seek such extensions more than once and therefore are more likely to use their own personnel, the Department has estimated the burden based wholly on use of in-house personnel.

Type of Review: New.

Agency: U.S. Department of Labor, Pension and Welfare Benefits Administration.

Title: Notice of Extension of Time for Compliance with 29 C.F.R. 2510.3–102.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms.

Burden:

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden
Extension of Effective Date	166	Occasionally	166		1 hour.
Extension of Maximum Time	166	Occasionally	166	6 hours	996 hours.
Totals			332		997

Estimated Total Burden Cost:

Applicability Postponement: $249,000 (first year only).

Extension of Maximum Time: $124,000.

Total: $373,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this rule does not include any Federal mandate that may result in increased expenditures by State, local or tribal governments, and does not impose an annual burden exceeding $100 million on the private sector.

Statutory Authority

The final regulation is adopted pursuant to the authority contained in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894; 29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR 1978 Comp. 332, and under Secretary of Labor's Order No. 1–87, 52 FR 13139 (Apr. 21, 1987).

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Pensions, Plan assets.

In view of the foregoing, Part 2510 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as set forth below:

PART 2510—DEFINITIONS OF TERMS USED IN SUBCHAPTERS C, D, E, F, AND G OF THIS CHAPTER

1. The authority citation for part 2510 continues to read as follows:

Authority: Secs. 3(2), 111(c), 505, Pub. L. 93–406, 88 Stat. 852, 894, (29 U.S.C. 1002(2), 1031, 1135) Secretary of Labor's Order No. 27–74, 1–86, 1–87, and Labor-Management Services Administration Order No. 2–9.

Section 2510.3–101 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1978); 3 CFR 1978 Comp. 332, and sec. 11018(d) of Pub. L. 99–272, 100 Stat. 82.

Section 2510.3–102 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 477133, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1978); 3 CFR 1978 Comp. 332.

2. Section 2510.3–102 is revised to read as follows:

§ 2510.3–102 Definition of ''plan assets''—participant contributions.

(a) *General rule.* For purposes of subtitle A and parts 1 and 4 of subtitle B of title I of ERISA and section 4975 of the Internal Revenue Code only (but without any implication for and may not be relied upon to bar criminal prosecutions under 18 U.S.C. 664), the assets of the plan include amounts (other than union dues) that a participant or beneficiary pays to an employer, or amounts that a participant has withheld from his wages by an employer, for contribution to the plan as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets.

(b) *Maximum time period for pension benefit plans.* With respect to an employee pension benefit plan as defined in section 3(2) of ERISA, in no event shall the date determined pursuant to paragraph (a) of this section occur later than the 15th business day of the month following the month in which the participant contribution amounts are received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the 15th business day of the month following the month in which such amounts would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

(c) *Maximum time period for welfare benefit plans.* With respect to an employee welfare benefit plan as defined in section 3(1) of ERISA, in no event shall the date determined pursuant to paragraph (a) of this section occur later than 90 days from the date on which the participant contribution amounts are received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the date on which such amounts would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

(d) *Extension of maximum time period for pension plans.* (1) With respect to participant contributions received or withheld by the employer in a single month, the maximum time period provided under paragraph (b) of this section shall be extended for an additional 10 business days for an employer who—

(i) Provides a true and accurate written notice, distributed in a manner reasonably designed to reach all the plan participants within 5 business days after the end of such extension period, stating—

(A) That the employer elected to take such extension for that month;

(B) That the affected contributions have been transmitted to the plan; and

(C) With particularity, the reasons why the employer cannot reasonably segregate the participant contributions within the time period described in paragraph (b) of this section;

(ii) Prior to such extension period, obtains a performance bond or irrevocable letter of credit in favor of the plan and in an amount of not less than the total amount of participant contributions received or withheld by the employer in the previous month; and

(iii) Within 5 business days after the end of such extension period, provides a copy of the notice required under paragraph (d)(1)(i) of this section to the Secretary, along with a certification that such notice was provided to the participants and that the bond or letter of credit required under paragraph (d)(1)(ii) of this section was obtained.

(2) The performance bond or irrevocable letter of credit required in paragraph (d)(1)(ii) of this section shall be guaranteed by a bank or similar institution that is supervised by the Federal government or a State government and shall remain in effect for 3 months after the month in which the extension expires.

(3)(i) An employer may not elect an extension under this paragraph (d) more than twice in any plan year unless the employer pays to the plan an amount representing interest on the participant contributions that were subject to all the extensions within such plan year.

(ii) The amount representing interest in paragraph (d)(3)(i) of this section shall be the greater of—

(A) The amount that otherwise would have been earned on the participant contributions from the date on which such contributions were paid to, or withheld by, the employer until such money is transmitted to the plan had such contributions been invested during such period in the investment alternative available under plan which had the highest rate of return; or

(B) Interest at a rate equal to the underpayment rate defined in section 6621(a)(2) of the Internal Revenue Code from the date on which such contributions were paid to, or withheld by, the employer until such money is fully restored to the plan.

(e) *Definition.* For purposes of this section, the term *business day* means any day other than a Saturday, Sunday or any day designated as a holiday by the Federal Government.

(f) *Examples.* The requirements of this section are illustrated by the following examples:

(1) Employer W is a small company with a small number of employees at a single payroll location. W maintains a plan under section 401(k) of the Code in which all of its employees participate. W's practice is to issue a single check to a trust that is maintained under the plan in the amount of the total withheld employee contributions within two business days of the date on which the employees are paid. In view of the relatively small number of employees and the fact that they are paid from a single location, W could reasonably be expected to transmit participant contributions to the trust within two days after the employee's wages are paid. Therefore, the assets of W's 401(k) plan include the participant contributions attributable to such pay periods as of the date two business days from the date the employee's wages are paid.

(2) Employer X is a large national corporation which sponsors a section 401(k) plan. X has several payroll centers and uses an outside payroll processing service to pay employee wages and process deductions. Each payroll center has a different pay period. Each center maintains separate accounts on its books for purposes of accounting for that center's payroll deductions and provides the outside payroll processor the data necessary to prepare employee paychecks and process deductions. The payroll processing service has adopted a procedure under which it issues the employees' paychecks when due and deducts all payroll taxes and elective employee deductions. It deposits withheld income and employment payroll taxes within the time frame specified by 26 CFR 31.6302–1 and forwards a computer data tape representing the total payroll deductions for each employee, for a month's worth of pay periods, to a centralized location in X, within 4 days after the end of the month, where the data tape is checked for accuracy. A single check representing the aggregate participant contributions for the month is then issued to the plan by the employer. X has determined that this procedure, which takes up to 10 business days to complete, permits segregation of participant contributions at the earliest practicable time and avoids mistakes in the allocation of contribution amounts for each participant. Therefore, the assets of X's 401(k) plan would include the participant contributions no later than 10 business days after the end of the month.

(3) Assume the same facts as in paragraph (f)(2) of this section, except that X takes 30 days after receipt of the data tape to issue a check to the plan representing the aggregate participant contributions for the prior month. X believes that this procedure permits segregation of participant contributions at the earliest practicable time and avoids mistakes in the allocation of contribution amounts for each participant. Under paragraphs (a) and (b) of this section, the assets of the plan include the participant contributions as soon as X could reasonably be expected to segregate the contributions from its general assets, but in no event later than the 15th business day of the month following the month that a participant or beneficiary pays to an employer, or has withheld from his wages by an employer, money for contribution to the plan. The participant contributions become plan assets no later than that date.

(4) Employer Y is a medium-sized company which maintains a self-insured contributory group health plan. Several former employees have elected, pursuant to the provisions of ERISA section 602, 29 U.S.C. 1162, to pay Y for continuation of their coverage under the plan. These checks arrive at various times during the month and are deposited in the employer's general account at bank Z. Under paragraphs (a) and (b) of this section, the assets of the plan include the former employees' payments as soon after the checks have cleared the bank as Y could reasonably be expected to segregate the payments from its general assets, but in no event later than the 90 days after a participant or beneficiary, including a former employee, pays to an employer, or has withheld from his wages by an employer, money for contribution to the plan.

(g) *Effective date.* This section is effective February 3, 1997.

(h) *Applicability date for collectively-bargained plans.* (1) Paragraph (b) of this section applies to collectively bargained plans no sooner than the later of—

(i) February 3, 1997; or

(ii) The first day of the plan year that begins after the expiration of the last to expire of any applicable bargaining agreement in effect on August 7, 1996.

(2) Until paragraph (b) of this section applies to a collectively bargained plan, paragraph (c) of this section shall apply to such plan as if such plan were an employee welfare benefit plan.

(i) *Optional postponement of applicability.* (1) The application of paragraph (b) of this section shall be postponed for up to an additional 90 days beyond the effective date described in paragraph (g) of this section for an employer who, prior to February 3, 1997—

(i) Provides a true and accurate written notice, distributed in a manner designed to reach all the plan participants before the end of February 3, 1997, stating—

(A) That the employer elected to postpone such applicability;

(B) The date that the postponement will expire; and

(C) With particularity the reasons why the employer cannot reasonably segregate the participant contributions within the time period described in paragraph (b) of this section, by February 3, 1997;

(ii) Obtains a performance bond or irrevocable letter of credit in favor of the plan and in an amount of not less than the total amount of participant contributions received or withheld by the employer in the previous 3 months;

(iii) Provides a copy of the notice required under paragraph (i)(1)(i) of this section to the Secretary, along with a certification that such notice was provided to the participants and that the bond or letter of credit required under paragraph (i)(1)(ii) of this section was obtained; and

(iv) For each month during which such postponement is in effect, provides a true and accurate written notice to the plan participants indicating the date on which the participant contributions received or withheld by the employer during such month were transmitted to the plan.

(2) The notice required in paragraph (i)(1)(iv) of this section shall be distributed in a manner reasonably designed to reach all the plan participants within 10 days after transmission of the affected participant contributions.

(3) The bond or letter of credit required under paragraph (i)(1)(ii) shall be guaranteed by a bank or similar institution that is supervised by the Federal government or a State government and shall remain in effect for 3 months after the month in which the postponement expires.

(4) During the period of any postponement of applicability with respect to a plan under this paragraph (i), paragraph (c) of this section shall apply to such plan as if such plan were an employee welfare benefit plan.

Signed at Washington, DC, this 30th day of July 1996.

Olena Berg,

Assistant Secretary for Pension and Welfare Benefits, Department of Labor.

[FR Doc. 96–19791 Filed 8–6–96; 8:45 am]

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federal register

Wednesday
August 7, 1996

Part IV

Environmental Protection Agency

Fiscal Year 1996 Computational Science and Environmental Education (EarthVision) Cooperative Agreements Program; Solicitation Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5548–5]

Fiscal Year 1996 Computational Science and Environmental Education (EarthVision) Cooperative Agreements Program; Solicitation Notice

Section I. Important Preapplication Information

A. What is the purpose of this solicitation notice?

The Office of Administration and Resources Management (OARM) at the United States Environmental Protection Agency (EPA) solicits preapplications from colleges, universities, and other institutions of higher education; and from other nonprofit public or private agencies, organizations, and institutions to support an ongoing *computational science and environmental education program, EarthVision,* as defined in this notice.

B. What is the computational science and environmental education program, EarthVision? How much money is available for this program?

EarthVision is a computational science and environmental modeling education enrichment program. The primary goals of EarthVision are to:

1. Introduce teams of high school students and teachers to *computational science, environmental modeling, and high performance computing;*

2. Attract students to technical and environmental sciences, and thereby contribute to a better trained workforce;

Additional objectives of EarthVision include:

a. Enhance critical thinking and awareness of how to apply mathematical environmental models in environmental research.

b. Promote knowledge of how to create and test environmental hypotheses with mathematical models, and;

c. Increase understanding of the role of computationally intensive models in environmental research, problem solving, decision making, and regulation development.

You can view and download this solicitation notice, as well as a description of the past cooperative ventures under this program, from: // www.epa/gov/nesc/index2.html

One million dollars in Fiscal Year 1996 cooperative agreement funds are available under a Congressional appropriation to support the computational science and environmental education program, EarthVision. Total funding is anticipated to be $3 million for the three-year period, Fiscal Year 1996—Fiscal Year 1998.

C. What is computational science, environmental modeling, and high performance computing? What is computational science and environmental modeling education enrichment?

Computational science is the use of computationally intensive mathematical models to simulate or replicate real work conditions that are either too large or too small to replicate in a laboratory. Environmental models duplicate physical or chemical processes that take place in the environment.

High performance computing encompasses advanced computing, communications, and information technologies. It relies on scientific workstations, supercomputer systems, and high speed networks. High performance computing integrates and links special purpose and experimental systems; the new generation of large, scalable parallel systems, and; applications and systems software over a high speed network.

Computational science and environmental modeling education enrichment teaches how to apply computational science and environmental modeling skills to environmental research. It relies on the scientific method and the development and testing of environmental research hypotheses. It involves critical thinking, problem solving, and decision making.

D. When is my letter of intent due to EPA? When is my pre-application due to EPA and when will EPA announce the cooperative agreements award? Why is EPA announcing the availability of Fiscal Year 1996 funds so late in the year?

A one-page letter of intent is due to EPA postmarked no later than Thursday, August 25. The letter of intent must be no longer than one page and state that your organization intends to submit a pre-application. The letter of intent is non-binding and does not commit you to submit a pre-application. The letter of intent will allow EPA to substantiate the level of interest so that the Agency can gauge how many pre-applications it will receive.

Pre-applications (25 page statement of work with attached budget) must be mailed to EPA postmarked no later than Friday, October 25, 1996. Pre-applications postmarked after Friday, October 25, 1996, will not be considered for funding. EPA expects to announce the cooperative agreement award later in the calendar year, 1996, or early in 1997.

Owing to the Continuing Resolution, EPA was unable to finalize its budget earlier in the fiscal year. EPA waited for an approved operating plan before releasing this solicitation. This will NOT affect your application.

E. Where do I mail my letter of intent and pre-application?

Letters of intent and pre-applications must be mailed to: U.S. EPA, EarthVision, Computational Science and Environmental Modeling, Education Enrichment Program, Mail Drop 34, Research Triangle Park, North Carolina, 27711.

F. Where do I get information and forms needed to prepare my pre-application?

Please read this solicitation notice carefully, it contains all the information and forms necessary to prepare a pre-application. If your project is selected as the finalist after the evaluation process is concluded, EPA will provide you with additional forms needed to process your pre-application.

G. How much money can I request for my cooperative agreement project? Does the dollar amount affect my chance of being selected?

EPA anticipates making *one* award for the computational science and environmental modeling education enrichment program, EarthVision. Applicants may select up to $1 million in cooperative agreement funds for the first year of the computational science and environmental modeling education enrichment program.

Section II. Eligible Applicants

H. Who is eligible to submit pre-applications?

Any college, university, or other institute of higher education, or other nonprofit public or private agency, organization, or institution to support the computational science and environmental modeling education enrichment program, EarthVision, where authorized under the following Actions and Sections: (a) Clean Water Act, Section 104; (b) Clean Air Act, Section 103; (c) Solid Waste Disposal Act, Section 8001; (d) Safe Drinking Water Act, Section 1442, and; (e) National Environmental Policy Act, Section 102(2)(F). 501(c)(4) organizations that lobby are not eligible to apply.

I. May an organization submit more than one pre-application in Fiscal Year 1996?

Yes, an organization may submit more than one pre-application, *but only if the pre-applications are for different projects.* No organization will be awarded more than one cooperative agreement for the same project during the same fiscal year.

J. May I submit a pre-application for Fiscal Year 1996 even if I have been awarded funding under this program in the past four years?

Yes, applicants who were awarded funding previously may submit a pre-application for Fiscal Year 1996. The Fiscal Year 1996 pre-application may or may not have any relationship to a project funded in a previous year. Each pre-application for Fiscal Year 1996 will be evaluated based upon the specific criteria set forth in this solicitation and in relation to the other pre-applications.

K. May a teacher, educator, or faculty member apply?

A teacher's school district, an educator's nonprofit organization, or a faculty member's college or university may apply, but an individual teacher, educator, or faculty member cannot. Only agencies, organizations, and institutions, and not individuals, may apply for the cooperative agreement.

Section III. Eligible Activities and Funding Priorities

L. What general activities are eligible for funding under this program?

The eligible computational science and environmental modeling education enrichment activities that may receive funding *must include, but are not limited to, at least one of the following:*

1. Design, demonstrate, or disseminate computational science and environmental modeling curricula, including the enhancement or development of educational tools and materials.

2. Design and demonstrate projects to enhance existing high school curricula in math, science, and computer science with the incorporation of computational science and environmental modeling tools and techniques.

3. Projects to understand and assess a specific computational science or environmental modeling issue, and to transfer those findings to EarthVision participants.

4. Provision of computational science and environmental modeling training or related education for high school students, teachers, and/or faculty in a specific geographic location.

5. Design and demonstration of projects to foster international cooperation in the assessment and analysis of environmental data using computational science and environmental modeling.

Under Section III.L.1. above, *EPA strongly encourages applicants to demonstrate or disseminate existing curricula in computational science and environmental modeling rather than designing new curricula.* EPA will consider funding new curricula only where the applicant demonstrates that there is a need. Examples of need may include instances in which: (1) Existing computational science and environmental modeling curricula has not been designed for a certain audience; (2) Existing computational science and environmental modeling curricula cannot be adapted well to a particular local setting, and; (3) Existing curricula are not otherwise accessible. The applicant must discuss what steps they have taken to address this need. You may cite a Conference where the need was discussed, the results of inquiries made with various educational institutions, or a research or other published document.

M. What activities are not eligible for funding under this program?

Funds cannot be used for:

1. Construction projects;

2. Technical training of environmental management professionals;

3. Non-educational research and development; and/or

4. Computational science information projects.

Under Section III.M.1. above, EPA will not fund construction activities such as the acquisition of real property (e.g., buildings) or the construction or modification of any building. EPA will not fund the acquisition of services for the direct benefit of EPA.

Under Section III.M.4. above, EPA will fund only *computational science and environmental modeling education enrichment* projects, not projects that are solely designed to develop or disseminate computational science and environmental modeling information. As discussed in Section I.C. above, computational science and environmental modeling education enrichment teaches how to apply computational science and environmental modeling skills to environmental research. It involves critical-thinking, problem-solving, and decision making.

In comparison, *computational science information* provides facts or opinions about the application of computationally intensive mathematical models to environmental issues. It does not enhance skills in environmental research, critical thinking, problem solving, or decision making. While an understanding of computational science in environmental research is important, the information alone does not constitute computational science education enrichment. To reiterate, computational science and environmental modeling education enrichment teaches people how to apply computationally intensive mathematical environmental models to environmental research.

N. What specific types of projects will EPA fund?

EPA will fund only those proposals which meet the criteria specified under #1 and #2 below. Proposals which do not meet these criteria will not be funded.

1. All proposals *must discuss how the proposed project:*

a. Is new or substantially improved;

b. Has the potential for wide application, *and;*

c. Addresses a high priority issue in computational science and environmental modeling.

Applicants must define ''new or substantially improved,'' ''wide application,'' and ''high priority issue'' as they relate to each individual project. For instance, a project may be *new or substantially improved* if it reaches a specific community for the first time, develops a new or improved teaching strategy, or uses a new or improved method of applying existing computational science and environmental modeling education enrichment materials. Similarly, a project may have *wide application* if it targets a large and diverse audience in terms of numbers or demographics or if it can serve as a model program elsewhere. Finally, a project may address a *high priority issue in computational science or environmental modeling education enrichment* if the applicant demonstrates the importance of the issue to the community, state, or region being targeted by the project. For instance, a community which has notable air pollution problems may find it appropriate to increase understanding of how computational science is used in designing air pollution models and in assessing alternative solutions.

2. *All proposals must also focus on one of the following:*

a. Improving computational science and environmental modeling teaching skills for teachers, faculty, and other nonformal educators, and learning skills for students (e.g., through workshops, summer training sessions, and Saturday classes);

b. Building local capacity to develop, deliver, and continue computational science and environmental modeling education enrichment programs, or;

c. Promoting careers in environmental sciences and computational science among students.

All proposals must clearly identify which of the above the proposal will focus on. You will not increase your chances of being funded by focusing on more than one of the above. The terms

used under Section III.N.2.a–c. are defined below.

The term *workshops, summer training sessions, and Saturday classes* refers to training activities that prepare educators to utilize computational science and environmental modeling education materials. Workshops, summer training sessions, and Saturday classes may be directed toward young people and/or adults in formal and/or informal settings. (A formal setting is a school, college, university or similar institution devoted to learning; an informal setting may include a museum, nature center, park, or community center which may not be devoted to learning but often includes such activities). Workshops should emphasize an investigative and hands-on approach to learning that leads to the development of problem-solving and critical thinking skills.

The term *building local regional capacity* refers to the development and implementation of plans designed to improve the coordinated delivery of computational science and environmental modeling education enrichment at the local level. The primary providers should coordinate local planning and implementation of the computational science and environmental modeling education enrichment activities with State Departments of Education or Natural Resources, local school districts, and state, local, and tribal environmental education coordinating councils. Examples of how to build local capacity include the development of plans for:

1. Identifying and assessing needs as well as setting priorities;
2. Creating grant programs or identifying funding sources for computational science and environmental modeling education enrichment providers, and/or;
3. Identifying computational science and environmental modeling teacher training needs.

Section IV. The Pre-Application

O. What is a pre-application?

The pre-application contains three parts: 1) the ''Application for Federal Assistance (Standard Form 424 (or SF 424), attached); 2) The ''Budget Information: Non-Construction Programs'' (Standard Form 424A (or SF 424A), attached), and; 3) A work plan (described below). To ensure your pre-application is completed properly, carefully follow the instructions on SF 424, SF 424A, and those provided below. *The SF 424, SF 424A, and completed work plan contain all the information EPA will use to evaluate the merits of your pre-application.* Only finalists will be asked to submit additional forms needed to process your pre-application.

P. Are matching funds required?

Yes, non-Federal matching funds of *at least 5% of the total cost of the project* are required, although EPA encourages matching funds of greater than 5%. Federal funds to support the project must not exceed 95% of the total cost of the project. The 5% match may be provided by the applicant or any other organization or institution, except that no portion of the 5% match can include Federal funds (unless specifically authorized by statute). The 5% match may be provided in cash or by in-kind contributions and other non-cash support. In-kind contributions often include salaries or other verifiable costs. In the case of salaries, applicants may use either minimum wage or fair market value. The proposed match, including the value of in-kind contributions, is subject to negotiation with EPA. The value of in-kind contributions must be carefully documented. All cooperative agreements are subject to audit.

The matching non-Federal share is a percentage of the entire cost of the project. For example, if the 95% Federal portion is $4,950, then the entire project should, at a minimum, have a budget of $5,211, with the recipient providing a contribution of $261. The amount of non-Federal funds, including in-kind contributions, must be itemized in the budget.

Q. Can I use Federal funds in addition to those provided by this program to support the same project?

Yes, you may use Federal funds in addition to those provided by this program, but only for different activities. However, you may not use any Federal funds to meet all or any part of the required 5% match as stated in Section IV.P. above. If you have already been *awarded* Federal funds for a project in which you are seeking additional support from this program, please provide the overall dollar amount being awarded by the other Federal Agency as a footnote. However, do not include the figures from the other Federal support in the budget you submit. You must identify the Project Officer, Agency, Office, address, phone number, and the amount of the award.

R. Can I request funding for any budget category on the SF 424A (i.e., personnel/salaries, fringe benefits, travel, equipment, supplies, contractual, and indirect charges)?

Yes, you may request funding for any or all of the budget categories identified above with the following exceptions. First, as indicated under Section III.M.1. above, EPA will not fund the acquisition of real property (including buildings) or the construction or modification of any building.

Second, you may request funds to pay for salaries and fringe benefits, but only for those personnel who are directly involved in implementing the proposed project and whose salaries and fringe benefits are directly related to specific products or outcomes of the proposed project. EPA strongly encourages applicants to request *reasonable* amounts of funding for salaries and fringe benefits. Third, you may include a request for indirect costs if your organization has already negotiated and received an indirect cost rate from the Federal government.

Organizations may request an indirect cost rate. If you do not have an indirect cost rate, you will have to negotiate an indirect cost rate when the award is made.

S. What must be included in the pre-application?

The pre-application must contain an SF 424, SF 424A, and work plan as described below.

1. *Application for Federal Assistance and Budget Information (SF 424 AND SF 424A).* The SF 424 and SF 424A are required for all Federal grants and cooperative agreements. A completed SF 424 AND SF 424A must be submitted as part of your pre-application. These forms, along with instructions, are included at the end of this notice. Please carefully review the instructions and sample. Refer to Section IV.R. above for information on what types of budget categories can and cannot be funded under this program.

2. *Work Plan.* A work plan describes your proposed project. *The total number of points possible for each proposal is 100.* These points will be distributed as follows. Each of the following four sections of the work plan are assigned points which add up to 100. (Certain sections are given more points than others reflecting the relative importance of each section).

All work plans must include and be formatted according to all four sections (a–d) below.

a. *Project Summary:* Provide EPA will an overview of your entire project. The summary must be *no more than one page* and must briefly include *all seven* of the following:

1. Describe your organization (and your key partners);
2. State the goals and specific objectives of your project;
3. Identify what type of project you will focus on as described under Section III.N.2.a-c. (e.g., teacher or student training; building local capacity, or; promoting careers in environmental or computational science);

4. Describe the demographics of your target audience (including the total number of direct participants, ethnic composition, and type of individuals reached such as teachers, students, or the general public);

5. Indicate how you will reach your target audience;

6. Describe the expected results of your project and how you will evaluate it, *and;*

7. Indicate for what types of activities the EPA funds will be used.

The project summary will be scored on how well you provide an overview of your entire project based upon the seven subsections identified above.

Project Summary Maximum Score: 10 points.

b. *Project Description:* Provide EPA with an explanation of how your proposed project meets #1 and #2 below.

1. Explain how the proposed project: (a) Is new or significantly improved; (b) Has wide application, and; (c) Addresses a priority issue in computational science and environmental modeling as described under Section III.N.1.a–c.

This subsection will be scored on how well you explain how your proposal meets the three elements identified above.

Subsection maximum score: 15 points (5 points for each of the three elements a–c identified above).

2. Explain how the proposed project: (a) Improves computational science and environmental modeling teaching skills; (b) Builds local capacity, or; (c) Promotes careers in environmental sciences and computational science as described under Section III.N.2.a–c.

This subsection will be scored on how clearly and effectively your project: (a) Establishes realistic goals and objectives; (b) Identifies its target audience and demonstrates an understanding of the needs of that audience; (c) Uses an effective means or delivery system for reaching the target audience/implementing the project, and; (d) Demonstrates that it uses or produces quality educational products or methods which teach critical thinking, problem solving, and decision making skills.

Subsection maximum score: 45 points (15 points for each of the three elements identified in this paragraph).

Project Description Maximum Score: 60 points.

c. *Project Evaluation:* Provide EPA with an explanation of how you will determine or measure whether you are meeting the goals and objectives of your project. Evaluation plans may be quantitative and/or qualitative and may include, for example, surveys, observation, or outside consultation.

The project evaluation will be scored on the extent to which: a) Your evaluation plan will measure the project's effectiveness, and; b) You plan to apply data gathered from your evaluation to strengthen your project.

Project Evaluation Maximum Score: 10 points (5 points for each of the two elements identified above).

d. *Appendices:* Provide EPA with a detailed budget, resumes of key personnel, and letters of commitment. *No other appendices or attachments such as video tapes or sample curricula may be submitted.*

1. Budget: Describe how you will use the funds for personnel/salaries, fringe benefits, travel, equipment, supplies, contract costs, and indirect costs. You must also include a table which lists each major proposed activity, as well as the month and year it will be completed and the amount of EPA funds that will be spent on each activity.

This subsection will be scored on: (a) How well the budget information clearly and accurately shows how funds will be used, and; (b) Whether the funding request is reasonable given the activities proposed.

Subsection maximum score: 10 points (5 points for each of the two elements identified in this paragraph).

2. Key personnel and Letters of Commitment: Attach one or two page resumes for up to three key personnel implementing the project. Also, include one page letters of commitment from partners (if there are partners) with a significant role in the project. *Do not include letters of support; they will not be considered in evaluation pre-applications.*

This subsection will be scored based upon whether resumes of key personnel are included and whether the key personnel are qualified to implement the proposed project. In addition, the score will reflect whether letters of commitment are included (if partners are used) and the extent to which a firm commitment is made.

Subsection maximum score: 10 points.

Appendices Maximum Score: 20 points.

T. What are the page limits for the work plan?

Your work plan *must* be limited to *25 pages.* The page limit applies *only to the work plan* (i.e., the ''summary,'' ''project description,'' and ''project evaluation''), not the appendices. ''One page refers to one side of singe-spaced typed page. The pages *must* be letter sized (8½ × 11 inches), with a normal type size (10 or 12 cpi) and at least 1 inch margins. *To conserve paper, please provide double-sided copies of the pre-application.*

U. How must the pre-application be submitted?

The applicant must submit one original and two copies of the pre-application (a signed SF 424, an SF 424A, and a work plan). Please submit ONLY the SF 424, the SF 424A, and a work plan. Do not include other attachments such as cover letters, tables of contents, or appendices other than those required (budget, resumes, letters of commitment). The SF 424 should be the first page of your pre-application and must be signed by a person authorized to receive funds. Pre-applications must be reproducible; they should not be bound. They should be stapled or clipped once in the upper left hand corner, typed on white paper, and with page numbers in the upper right hand corner.

V. What regulations must I comply with in submitting my proposal?

EPA's general assistance regulations at 40 CFR Part 31 applies to state, local, and Indian tribal governments and 40 CFR Part 30 applies to all other applicants such as universities and other nonprofit organizations.

Section V. Review and Selection Process

W. How will pre-applications be reviewed and who will conduct the reviews?

Pre-applications will be reviewed in two phases: (1) The screening phase, and; (2) The evaluation phase. During the screening phase, pre-applicants will be reviewed to determine whether they meet the basic requirements of this notice, especially as described under Sections II and III. Only pre-applications which meet all of the basic requirements will enter the evaluation phase of the review process. During the evaluation phase, pre-applications will be evaluated based upon the quality of their work plans, especially the degree to which the work plan meets the requirements set for in Section III.N.1 and 2. Reviewers conducting the screening and evaluation phases of the review process will include EPA officials external to this office. The review panel will include environmental modelers, computational scientists, and environmental educators approved by EPA. At the conclusion of the evaluation phase, the reviewers will score each applicant's work plan based upon the scoring system identified in Section IV.S.2.

X. How will the final selections be made?

After individual projects are evaluated and scored by the reviewers as described under Section V.W. above,

EPA officials will identify the highest ranking finalist among the pre-applicants. In making a final selection, EPA's goal is to fund a project that takes into account, but is not limited to, the following:

1. The type of target audience and their socioeconomic status;
2. The methods used to reach the target audience;
3. Whether the proposal makes effective use of partnerships, *and;*
4. The cost.

In reference to *socioeconomic status,* under Section V.X.1. above, EPA's goal is to encourage applicants to submit proposals that address *environmental justice* for culturally diverse and low income populations. EPA hopes to fund a proposal which scores high in the evaluation process and which addresses *environmental justice.* The term environmental justice refers to the fair treatment of people of all races, cultures, and income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from the operation of industrial, municipal, and commercial enterprises and from the execution of Federal, state, local, and tribal programs and policies.

Efforts to address environmental justice through computational science and environmental modeling education enrichment programs may include educational programs that provide culturally diverse and low income populations with critical thinking, problem solving, and decision making skills to: (1) Use mathematical environmental models in environmental research; (2) Create and test environmental hypotheses with mathematical models, and; (3) Understand the role of computationally intensive models in environmental research and decision making.

In reference to the *effective use of partnerships,* under Section V.X.3. above, EPA's goal is to encourage applicants to submit proposals that form partnerships, where possible. EPA hopes to fund a proposal which scores high in the evaluation process and which promotes the effective use of partnerships among organizations. The term partnership refers to forming a collaborative working relationship between two or more organizations such as governmental agencies, non-profit organizations, educational institutions, and/or the private sector.

The Assistant Administrator of the Office of Administration and Resources Management at EPA headquarters will select the cooperative agreement recipient, taking into account the recommendations of the Director of the Office of Information Resources Management (OIRM) and the Director of the Enterprise Technology Services Division (ETSD/OIRM). They will base their recommendations on the factors discussed above.

Y. How and when will I be notified about the status of my proposal?

Applicants will receive a confirmation that EPA has received their pre-application once EPA has received all pre-applications and logged them into a chronological data base. EPA will notify applicants again after the award has been announced.

Z. Where may I obtain more information on possible sources of funding other than this program?

EPA's Division of Environmental Education, Office of Communications, Education, and Public Affairs (OCEPA) sponsors the Agency's Environmental Education Grants Program. EPA's Environmental Education Grants Program provides financial support for projects which design, demonstrate, or disseminate environmental education practices. The program is authorized under Section 6 of the National Environmental Education Act of 1990 (the Act) (Pub. L. 101–619). For the environmental education grants program, Congress has appropriated between approximately $2.5 and $2.9 million per year from Fiscal Year 1992 through Fiscal Year 1995. EPA headquarters awards approximately $1 million in grant funds per year and each of EPA's ten regional offices award approximately $150,000 to $180,000 per year.

In cooperation with EPA, the North American Association for Environmental Education (NAAEE) has developed a publication called ''Grant Funding for Your Environmental Education Program'' which provides strategies for identifying potential sources of funding. This publication can be purchased for a $5.00 by writing NAAEE, Publications and Member Services, P.O. Box 400, Troy, Ohio, 45373.

Section VI. Grant Recipient Activities

AA. When can I begin incurring costs?

DO NOT incur costs until you receive the award document.

BB. How long is this project?

This is a three year project. Pre-applicants may request funds for up to a three-year budget period.

CC. Who will perform projects and activities?

Any person working on this project, whether it is an employee, a contractor, or a consultant, etc., of the recipient *must* be approved by EPA.

DD. What reports and work products must grant recipients submit to EPA and when are they due?

The cooperative agreement recipient must submit two copies of their *annual progress report and two copies of all work products* to the EPA Project Officer within 90 days after the end of each year of the project. The recipient must submit a final report to the EPA Project Officer within 90 days after the end of the project period. The recipient must submit quarterly status reports to the EPA Project Officer.

EE. What does EPA plan to do with the cooperative agreement recipient's final report and final work products?

EPA will establish a section for the computational science and environmental modeling education enrichment program on the home page of EPA's National Environmental Supercomputing Center (NESC). Work products suited to placement on the NESC home page will be located there. The NESC home page can be reached through EPA's web site at: http://www.epa.gov/nesc

Section VII. Additional Information on Preparing Pre-applications

FF. Where can I get additional information on preparing my pre-application?

EPA strongly encourages applicants to carefully read the solicitation notice. *Many questions, such as when is the deadline for submitting pre-applications and what activities can be funded under this program, are answered in this solicitation.*

For strictly administrative questions, such as filling out the SF 424 and SF 424A forms, call:

Grants Administration Division/ Headquarters, U.S. EPA, 202/260–9266.

For programmatic and technical questions, *no other information will be provided to applicants in order to be fair in this competitive assistance agreement. EPA will not elaborate on the programmatic and technical elements of this solicitation in order to avoid the appearance of giving preferential treatment to any single applicant.*

Please *do not* call EPA's Division of Environmental Education, Office of Communication, Education, and Public Affairs (OCEPA). The computational science and environmental education enrichment program, EarthVision, is sponsored by EPA's Office of Administration and Resources Management (OARM). As stated above,

EPA will not elaborate on the programmatic and technical elements of this solicitation in order to avoid the appearance of giving preferential treatment to any single applicant.

Dated: July 29, 1996.

Approved by:

Alvin M. Pesachowitz,

Acting Assistant Administrator, Office of Administration and Resources Management.

Instructions for the SF–424

This is a standard form used by applicants as a required fact sheet 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 include in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) and 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 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.
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 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 representatives of the applicant. A copy of the governing body's authorization for you to sign this application as an 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).

Additional Instructions for the SF–424

Block #6: You can obtain this number from your payroll office. It is the same Federal Identification Number which appears on W–2 forms. If your organization does not have a number, you may obtain one by calling the Taxpayer services number for the IRS.

Block #14: If your project covers many areas, several Congressional districts will be listed. If it covers the entire state, simply put in statewide. If you are not sure about the Congressional district, call the County Voter Registration Department.

Block #15: Line a is for the amount of money you are requesting from EPA. Lines b–e are for the amounts either you or another organization are providing for this project. Line f is for any program income which you expect will be generated by this project. Program income can be fees for services performed, income generated from the sale of a brochure, which was produced with grant funds, or admission fees to a conference financed by the grant funds. The total of lines b–e must be at least 5% of line g, as this cooperative agreement has a match requirement of 5% of the Total Allowable Costs.

Block #16: Check b, (NO) since your application does not have to be sent through the state clearinghouse for review.

Block #18: The authorized representative is the person who is able to contact or obligate your agency to the terms and conditions of the grant. (Please sign in blue ink).

Instructions for the SF–424A

Do not fill in Section A—Budget Summary.

Section B Budget Categories

All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B. Include both Federal and non-Federal (matching) funds combined.

For each major program, function, or activity, fill in the total requirements for funds by object class categories. Most applications will only have one program, function, or activity.

Line 6i—Show the totals of lines 6a through 6h in each column.

Line 6j—Enter the total of amounts on Lines 6i and 6j.

Program income—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income.

BILLING CODE 6560–50–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: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: 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

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

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federal register

Wednesday
August 7, 1996

Part V

Department of Justice

Federal Prison Industries

Product Development and Production: Public Involvement Procedures; Notice

DEPARTMENT OF JUSTICE

Federal Prison Industries

Product Development and Production: Public Involvement Procedures

AGENCY: Federal Prison Industries, Inc., Bureau of Prisons, Department of Justice.

ACTION: Notice.

SUMMARY: In this document, Federal Prison Industries, Inc. (FPI) requests comment on revised definitions of two key terms: new product and specific product.

DATES: Comments must be submitted by October 7, 1996.

ADDRESSES: Comments should be provided to Manager, Planning, Research, & Activation, Federal Prison Industries, Inc., 320 First Street, NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Baldau, (202) 508–8440.

SUPPLEMENTARY INFORMATION: In 1988, Congress enacted legislation, codified at 18 U.S.C. 4122(b), requiring that whenever FPI proposed to produce a new product, or significantly expand an existing product, it was necessary to conduct a market study, seek industry comment, and refer the matter to the Board of Directors for a final decision. This process has come to be known as the Industry Involvement Guidelines process. A lengthy negotiation period ensued in which FPI, labor and private industry met to develop definitions of ''new product'', ''specific product'' and ''significant expansion of an existing product,'' the key terms that were necessary to implement the legislation.[1] These definitions are based primarily on the SIC code of the Department of Commerce.

FPI has now had six years experience with the definitions of these key terms. On the positive side, the market studies using these definitions have supplied the Board with more and better information on impact of FPI's activities on the private sector than it had before the passage of the guidelines process. At the same time, it has become apparent that in some ways these definitions are unclear, suffer from unavailability of data, and draw upon indicators which are hard to keep track of and not always directly relevant. In addition, the government is moving away from the collection of data based on the narrowly defined SIC categories, which lie at the heart of the current definitions of new product and specific product.

To redress these problems, we propose basing the definitions of ''new product'' and ''specific product'' on the 4-digit FSC categories, rather than the SIC categories, and developing market studies using the FSC approach as the basis for these studies.[2] Two immediate benefits would stem from this change in approach: first, sales information by FSC category is readily available; and second, the information applies directly to the federal market, which is the primary focus of the market impact study. (SIC information pertains to the total market, including the private sector market.)

A preliminary discussion paper recommending the use of the FSC system, and a new method of determining what constitutes a significant expansion of an existing product, was circulated to the members of FPI's Implementation Committee.[3] The Committee members agreed that revisions to the existing definitions were called for, and that the new approach described herein looks promising. Yet one comment expressed that 4-digit FSC categories are in certain instances too broad.

FPI recognizes that in certain instances the 4-digit FSC categories may be too broad to serve as a definition for a new product, without further refinement. At the same time, we note that a particular 4-digit category may also be too narrow, given the fact that related items may appear in several categories. Therefore categories may occasionally be combined in a market study for purposes of measurement of the market.

To date we have not been able to develop a simple, single principle that can be applied in every situation to determine when to delete unrelated items from a 4-digit FSC categories and when to combine 4-digit FSC categories. Therefore, we propose the following process in lieu of an abstract definition.

FPI will adjust for the fact that in some cases the 4-digit FSC categories contain dissimilar items in the following manner: FPI will announce in the CBD its intent to produce any item that could reasonably be construed to be a new product, regardless of the fact that such an item falls in the same 4-digit category as an item that FPI is currently making, or has made within the recent past, and is not considered by FPI to be sufficiently different from an existing item to be considered a new product. Moreover, FPI will commit to ''over-report.'' That is, borderline cases will be announced in the CBD in order to allow for the full public scrutiny.

Of course, items which are located in 4-digit FSC codes in which FPI does not currently produce, will be treated as proposals which go through the guidelines process, and a market study will be conducted and made available for comment. The market impact study will measure the market based on the 4-digit FSC categories. In measuring the size of the federal market, we will make best efforts to delete unrelated items from the FSC category or categories. Commenters will have input into, and may comment on, the size of the market in the market study exactly as they do now.

Also, for reasons explained above, we have developed a new definition of ''significant expansion of an existing product'' which we believe is an improvement, in that the indicators of expansion which are clearer and directly relevant to the determination of impact on private industry.

We now publish the following definitions of ''specific product'', ''new product'', and ''significant expansion of an existing product'' for comment.

Revised Definitions

1. Specific Product

A specific product refers to the aggregate of items which are similar in function (e.g., bags and sacks), or which are frequently purchased for use in groupings (e.g., dormitory and quarters furniture) to the extent provided by the most current Federal Supply Classification (FSC) Code. There are currently 685 federal supply classes designated within the Federal Procurement Data System. FPI currently produces within 74 of these classes.

Specific products will equate to the most current 4-digit FSC Code, published by the General Services Administration, Federal Procurement Data Center (FPDC). As a general rule, products will be deemed to be different specific products if they are identified by a distinct 4-digit FSC code.

The following means will be used to determine how items should be treated:

—Items classified within the same 4-digit FSC code will be presumed to comprise a single specific product (unless otherwise determined by FPI, or with input from the relevant industry).

[1] The final definitions of ''Specific Product'' and ''New Product'' were published in the Commerce Business Daily (CBD) for December 4, 1989. The final definition of ''Significant Expansion of Production of an Existing Product'' was published in the CBD for January 2, 1991.

[2] The legislative history to the guidelines process provides that the definitions shall be reviewed periodically by the corporation and the board to assure continued relevance.

[3] This committee was established following the ''Summit Process'' in 1992, to address any new or continuing issues.

—The predominant material of manufacture (e.g., nylon vs. canvas) will not ordinarily be a factor in defining an item as a separate specific product.

In certain instances, with approval of its Board of Directors, FPI may combine FSC codes where multiple FSC's comprise a particular industry. In requesting the Board to combine FSC's, FPI will give careful consideration, and be especially sensitive to, companies that manufacture products (such as various items of apparel) in multiple FSC codes. Moreover, situations should be avoided by FPI where it would have to request Board approval of production and/or expansion in several ''specific products'' (e.g., office seating, case goods, and systems furniture), each of which often involves many of the same companies within a single potentially affected industry (e.g., office furniture).

The rationale for any proposed combining of FSC's will be set forth in the market study. In all cases, FPI will seek input from the potentially affected industry, early in the stages of industry notification, and include all input received in its submission to the Board of Directors.

In some instances, an item may be considered separate from another product in the same 4-digit FSC category, if its function differs substantially. In such cases, the 4-digit Standard Industrial Classification (SIC) code may be used as a back-up measure to more accurately define the product.

SIC codes will continue to be used at the 4-digit level to determine the size of the domestic market for a particular product. For purposes of product definition in the domestic market, FPI will combine 4-digit SIC codes when the data suggests the product under examination may encompass several different 4-digit SIC codes, with no substantial difference in the product (e.g., men's vs. women's apparel).

2. New Product

A new product is a 'specific product' which FPI has not manufactured or produced within the past five years. In cases where it has been determined that more than one specific product exists within a 4-digit FSC, the 4-digit SIC code will be used as a secondary indicator to determine whether the product is ''new''. In such cases, a new product will be defined as a 'specific product' in the four-digit SIC which FPI has not produced within the past five years.

In cases where FPI plans to manufacture products of limited duration or volume, e.g., with sales of less than $1 million in any given year, and where its Federal market share will not exceed 5 percent, FPI will announce such plans in the *Commerce Business Daily* (CBD), in lieu of undertaking the Industry Involvement Guidelines process. Barring any objection, FPI will proceed with its production plans. If an objection is raised, FPI will meet with the relevant industry in an effort to reach an acceptable position. If an agreeable outcome cannot be reached, FPI will proceed to initiate the Industry Involvement Guidelines process. Moreover, should FPI's planned sales reach or exceed $1 million, or FPI's market share exceed 5 percent, FPI will go through the Industry Involvement Guidelines process, as it would for any new product.

''Good Faith'' CBD Announcements—Items not deemed by FPI to be a New Product

Under current procedures, management decisions as to whether production of an item constitutes a new product are made by FPI staff, based on the SIC classification system, without public involvement. Under the proposed new procedures, there may be circumstances in which FPI plans to produce items that FPI does not consider to be a new product, but which an affected party may reasonably construe to be a new product. In these circumstances, the items will be announced for comment in the Commerce Business Daily. The purpose of this provision is to give private industry an added level of input into such decisions made by FPI, since it is not possible to anticipate every possible situation or question that could arise within the proposed definition.

The parameters for publishing such internal decisions that are made and announced subject to this provision will be as follows: items that a reasonable person could construe to be a product separate and distinct from another item which FPI is making or recently made would be subject to announcement even though their function is similar. As an example, the production of extreme cold weather trousers would be announced, although FPI already produces bullet resistant fragmentation vests, and both are items of protective clothing.

Items that are essentially the same product, or those that are variations of an existing FPI product (e.g., a new style of seating) would not be subject to announcement of any kind. However, FPI will resolve any question as to whether to announce in favor of announcement.

In submitting comments to FPI, the following guidelines will apply:

—Comments will be due within 10 days of the date of publication;

—Relevant comments will focus on and address why the item should be considered a new product, separate and distinct from a similar item currently being produced by FPI. Comments may include such factors as: the manufacture of the item involves substantially different material and processes; companies that produce this item specialize in manufacturing only that item; the manufacturing processes are unique and are not easily adaptable to produce other similar items;

—Comments related to market share and/or the impact that such a production decision may have on the firm will not ordinarily be considered relevant for purposes of this provision;

—All comments received in response to these announcements will be considered by FPI. The commenter will be advised whether FPI decides to go through the guidelines process.

As always, any interested party has a right to raise any question at any time with the Board of Directors (see 28 CFR 301.2), and thus may appeal to FPI's Board of Directors any issue or decision relating to whether a product is a new product. However, pending such review, FPI may proceed with its plans in accordance with the decision as announced in this process described above, unless and until the decision is reversed.

3. Significant Expansion of an Existing Product

Proposed production increases by FPI which may increase its market share will be reviewed during the Corporation's annual planning cycle and be deemed a significant product expansion under the following circumstances:

(1) Planned sales (measured in constant dollars) for the specific product will increase by more than 10 percent, or $1 million, in any given year, whichever is greater; or

(2) In any case where FPI's market share is greater than 25%, any increase in FPI's market share resulting from an increase in FPI production would be deemed to be significant for purposes of triggering the guidelines process.

Discussion: When either criterion is met, an analysis of the federal government market for the specific product will be conducted and an estimate of FPI's current and projected market share will be developed. The production increase will be deemed ''significant'' when FPI's market share position changes in accordance with the following sliding scale. If FPI currently has a 15% or less share of the federal

market, any increase in market share would be permissible, provided that the particular increase does not result in FPI exceeding a 15% market share. If FPI has a market share greater than 15%, but less than 20%, FPI could increase its market share to 20%, before the increase would be deemed to be significant. If FPI has a market share of greater than 20%, but less than 25%, FPI could increase its market share to 25%, before the increase would be deemed to be significant.

Situations where FPI production remains constant, but market share increases as a result of other factors, including market changes, will not require FPI to initiate the guidelines process. The fact that 25% may ''trigger'' the guidelines does not necessarily mean the Board of Directors cannot approve an FPI production level resulting in a federal market share above 25%.

The prior three years' data will be used to determine the share of the federal government market, to ensure that annual fluctuations are taken into account and normalized.

FPI may produce at the rate of past year sales levels, adjusted for inflation, without initiating the guidelines process.

In cases where FPI sales inadvertently or insubstantially exceed authorized levels, FPI will take steps to adjust its production by a corresponding amount the following year. If FPI plans call for continued growth, it will invoke the guidelines process without delay and seek Board approval of future production levels. Should the Board decide on a production level lower than that which FPI already achieved, FPI will adjust its future plans and, if necessary scale back, to comply with the Board's decision.

In cases of extreme public exigency, such as national disaster or national defense emergency, such as during Operation Desert Storm, FPI may exceed guidelines thresholds, provided FPI receives specific orders or requests from senior Department of Defense and/or Executive Branch officials. Increased sales resulting from national exigencies will not be considered a violation of guidelines ceilings in the year which they occurred. Such exceptional events will be subject to approval by FPI's Chief Operating Officer, with concurrence of FPI's Board of Directors.

Once these definitions are finalized and proposed revisions implemented, FPI's sales for the current fiscal year will be utilized as the base year for future application.

Prior decisions of FPI's Board of Directors will remain unaffected by these changes to the definitions.

These proposed procedures have been reviewed by FPI's Growth Strategies Implementation Committee. The following officials are represented on the Committee:

Executive Vice President, Envelope Manufacturers Association of America
Vice President—Government Affairs, Screen Printing and Graphic Imaging Association International
Manager, Break-Out Procurement Center Representative Program, Small Business Administration
Former Senior Staff Member, Brookings Institution Head of Office of Wages and Industrial Relations, AFL-CIO President, State/Federal Correctional Vendors Association

Their comments and suggestions have been incorporated into this request for comment.[4]

We now seek comments to these proposed changes. All comments received in response to this request for comment before expiration of the comment period will be provided to the FPI Board of Directors for consideration prior to the final publication and implementation of the procedures.

Robert Grieser,

Manager, Planning, Research and Activation Branch.

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BILLING CODE 4410–05–P

[4] Of course, these officials and these organizations are not precluded from making further comment at this time.

federal register

Wednesday
August 7, 1996

Part VI

Environmental Protection Agency

Availability of Permits Improvement Team Concept Paper on Environmental Permitting and Task Force Recommendations; Correction; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5546–1]

Notice of Availability of Permits Improvement Team Concept Paper on Environmental Permitting and Task Force Recommendations; Correction

AGENCY: United States Environmental Protection Agency.

ACTION: Correction.

SUMMARY: On July 19, 1996 in the Federal Register at page 37744, the Environmental Protection Agency (EPA), announced the availability of the document entitled ''Concept Paper on Environmental Permitting and Task Force Recommendation'' and the Agency's request for stakeholder comment. EPA intended to publish the document in the Federal Register on the same day as the announcement, but it was inadvertently not published. EPA is correcting this error by publishing the document in this Federal Register issue.

Dated: July 26, 1996.

James Mathews,

Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

Permits Improvement Team Final Draft of Concept Paper on Environmental Permitting and Task Force Recommendations, July 1996

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Executive Summary

The Permits Improvement Team (PIT) was established by Administrator Browner in July 1994 to improve environmental permitting processes. Extensive outreach was conducted to obtain input from all stakeholders on issues of concern in the specific media permitting programs. This input aided EPA in selecting specific areas to develop recommendations and demonstrated the need for a concept paper on the overall direction of the permit reform effort. The PIT's recommendations include a Concept Paper on Environmental Permitting and specific activities in six areas that would assist in the transition from the current permitting system to that envisioned as the future approach.

The analysis conducted as part of this project revealed that existing environmental statutes may limit EPA's latitude in fully implementing this new approach. As implementation proceeds, EPA will make changes to the various permitting programs that can be conducted under the existing statutes and will identify specific legislative barriers to full implementation.

The PIT's concept paper attempts to address the greatest challenge for EPA today: to answer the public demand for more environmental protection at less cost. This demand of ''more for less'' requires EPA to examine both the philosophy and practice of its permitting systems, to determine how they can be made to function more effectively while at the same time decreasing costs for environmental agencies and the regulated community. The PIT concluded that public access to information can be a driver that can lead to improved environmental results with less governmental involvement in individual facility activities.

The concept paper seeks to resolve these concerns by establishing a revised approach to environmental permitting: public performance-based permitting. This approach incorporates two concepts; one, the establishment of a defined level of performance to be achieved by the permittee and two, providing the public with the necessary information so they can monitor the permitting process and compliance of permitted facilities. After final approval of the concept paper, it will be used by EPA permit programs as official guidance on environmental permitting. Other environmental permitting programs, such as those of state, tribal or local governments, are also encouraged to adopt these principles where appropriate.

The essence of public performance-based permitting is to shift the focus of environmental permitting towards the measurement and assurance of performance, while providing flexibility as to how a permittee will meet performance standards. The focus of this system will not simply be performance, but performance within a public arena: to the extent possible and appropriate, the public should be involved in the setting of performance standards and the measurement and judgement of performance. The Team determined that too much time and resources are spent reviewing the technical means by which a permittee will comply with permit conditions. While detailed technical reviews were warranted 25 years ago, sufficient progress has been made in verifying technology and increasing corporate environmental responsibility that it is now appropriate to re-evaluate this approach.

Public performance-based permitting involves three different types of performance: environmental results, facility compliance, and Agency performance.

Environmental Results

The ultimate measure of the performance of EPA's environmental permitting systems is the condition of the air, land and water. Current permitting systems focus primarily on gathering information about permittees' compliance, but comparatively little information is gathered on the actual effects of permitted activities on human health and the environment. To a large extent, environmental permitting systems also lack the flexibility to restructure and rearrange their priorities in response to such environmental performance data, since they are often set up to issue individual permits based solely on the potential impacts of each facility. However, changes are being proposed in this area as permitting authorities consider ecosystem and community based approaches to permit issuance.

Increasing ambient monitoring while decreasing other compliance information requirements at the source would allow permitting agencies to prioritize permitting information requirements based on real environmental impacts. But permitting agencies should be encouraged and allowed to take this idea one step further, and prioritize which facilities will receive full-fledged individual permits and which facilities can receive general permits or no permit at all, based on certain conditions or levels of emissions. The better ambient information becomes, the more precisely permitting agencies can and should gear environmental permitting systems to the most significant risks to the environment. This could entail protection of high quality areas as well as focusing on areas where environmental standards are not being achieved.

Facility Compliance

The goal in reforming the existing permitting systems is to make permitting systems less prescriptive and more performance-based, in other words, to continue to tell a permittee what standards to achieve, but to no longer mandate, in most cases, how they are to achieve them.

In addition to allowing permittees the flexibility to determine the technical means by which they meet EPA standards, there are several other ways to increase permittees' operating flexibility. Permitting agencies should consider these alternatives and incorporate them into their permitting processes as appropriate. Any alternatives that provide increased flexibility to the regulated community need to ensure that the requirements are enforceable.

In general, where technologies are already proven or verified, there would be less need to perform technical review as part of the permitting process. EPA should give state, tribal and local governments the flexibility to reduce such reviews. EPA program offices should evaluate existing regulations, policies and priorities that limit this flexibility and make appropriate revisions where authorized by statute.

Another method to encourage flexibility includes allowing permitting agencies to reduce the number of times permits need to be formally modified. Generally, permit modification should be required only where process changes will increase pollution, or are needed to ensure proper operation or monitoring of a facility. Permitting agencies should be able to tailor their permit modification requirements by facility; facilities with good compliance records may be made subject to less prescriptive requirements.

Additionally, permitting agencies should use the permitting process to encourage municipal and industrial facilities to practice pollution prevention. One of the primary purposes of making permitting performance-based rather than technology-based is to encourage and allow facilities to pursue innovative technological approaches to preventing pollution at the source. In addition to pollution prevention technologies, the permitting system should encourage the use of more cost effective innovative technologies of any type, where practicable and consistent with legal requirements.

The flexibility provided to facilities must be coupled with the public reporting of compliance status that would provide visible and understandable information on whether or not facilities are meeting their permit conditions. In this way the public will be able to monitor the results of the modified permitting system based on the actual performance of individual facilities.

Agency Performance

EPA, state, tribal and local permitting programs should establish standards of performance upon which the program would be evaluated and institute systems of continuous evaluation and improvement of their own performance. The performance of EPA and other permitting agencies, like the performance of permittees and the actual condition of the environment, needs to be publicly reported in clear, understandable terms. By bringing these types of performance into the light, public performance-based permitting will focus attention on the results of environmental permitting systems, and use those results to continually make these systems more responsive and environmentally protective.

Task Force Recommendations

The recommendations of the six PIT Task Forces are highlighted below. The main report contains detailed discussions on each recommendation.

Administrative Streamlining Task Force Recommendations

- Create a predictable, user-friendly federal permit process.
- Encourage and implement flexible permitting projects.
- Tier permitting programs in proportion to environmental significance.
- Establish computer systems.
- Regional permit process assistance.

Alternatives to Individual Permits Task Force Recommendations

- Consider the appropriateness of using alternative permit approaches.
- Consider the performance of state, tribal and local permit programs that may regulate the same or similar activities.
- Develop and maintain a clearinghouse of permit alternatives being developed and used in federal and state/tribal/local programs throughout the country.
- Specific recommendations for alternatives to individual permits in the air, water and waste permitting programs.

Enhanced Public Participation Task Force Recommendations

- Develop ''easy reference'' guidance for public participation activities.
- Utilize the Environmental Justice Public Participation Checklist as guidance to the extent appropriate and feasible.
- Develop an inventory of mechanisms that promote access to environmental information.
- Explore, and possibly conduct pilots for, the development and use of comprehensive multi-media Community Involvement Plan.
- Develop a series of case studies on the effectiveness of public participation activities.

Performance Measures Task Force Recommendations

- Develop generic performance measures covering: process; results; and customer service.

Process—timeliness and number of pending permits.

Results—environmental indicators and level of compliance.

Customer service—customer satisfaction.

- Develop generic tracking measures covering: process and results.

Process—overall time required for permit issuance; permit application completeness; cost of permitting program; and number of pending renewal (air/water) and interim status (RCRA) permits.

Results—pollution prevention/innovative technology.

Pollution Prevention Incentives Task Force Recommendations

- Link performance-based permitting with facility-based permitting, consolidation of permitting requirements, and cross-media permitting.
- Create industry-sector inventories of regulatory thresholds for permitting.
- Explore offering alternative emissions tracking in exchange for using pollution prevention practices.
- Share pollution prevention data with permit applicants and affected communities, and give basic pollution prevention training to permit writers.
- Develop an enforcement policy to accommodate the possibility that innovative pollution prevention technologies may not perform as expected or may take longer to achieve compliance.
- In all general permits and permits-by-rule, include language that explains the preference for using pollution prevention approaches and the potential economic benefits of pollution prevention.

Training Task Force Recommendations

Provide information to the regulated community and others.

Provide information on every new significant rule.

Define and provide training on core skills and knowledge needed to issue permits.

Store and provide critical knowledge.

Concept Paper on Environmental Permitting

I. Introduction

A. Purpose of the Concept Paper

Over the past 25 years, EPA has continually searched to find the best ways to protect the environment. Among the most successful methods have been EPA's programs requiring industrial and municipal facilities to obtain permits to control their pollutant emissions [1] to the air, land and water. Programs such as New Source Review for air emissions, National Pollutant Discharge Elimination System (NPDES) for water discharges and the Resource Conservation and Recovery Act (RCRA) for hazardous waste management have in many ways reduced the negative impacts of industrial and municipal facilities on human health and the environment.

But numerous environmental challenges remain. Perhaps the greatest challenge for EPA today is to answer the public demand for *more* environmental protection at *less* cost. This demand of ''more for less'' requires EPA to examine both the philosophy and practice of its permitting systems, to determine how they can be made to function more effectively while at the same time decreasing costs for environmental agencies and the regulated community.

The Paper is intended to be a comprehensive list of recommendations to serve as a guide to Agency programs as they strive to improve the issuance, implementation, and compliance and enforcement of environmental permits. The Permits Improvement Team (PIT) recognizes that there is much ongoing work in this area. While some of these efforts are mentioned in conjunction with the recommendations, the PIT did not attempt to identify each and every program activity. Clearly, the Agency is already moving to implement some of the Paper's recommendations.

The PIT recognizes the ongoing work of a number of other groups that have been formed by the Agency to meet current environmental challenges through innovative approaches: for example, the Common Sense Initiative (CSI), Project XL, the Environmental Leadership Program, the Incentives for Environmental Auditing and Self Policing, the Small Business Policy, and the Incentives for Small Communities Policy. The PIT recognizes the new directions the Agency is undertaking as guiding principles for the PIT recommended projects. In fact, many of the recommendations contained in this report may be or may become pilot projects within these efforts. While some of the activities described within this Paper are ongoing efforts, others may require a redirection of Agency resources and/or changes to current statutory schemes.

This concept paper provides guidance by developing a revised approach to environmental permitting: public performance-based permitting. This approach incorporates two concepts: one, the establishment of a defined level of performance to be achieved by the permittee, and two, providing the public with the necessary information so they can monitor the permitting process and compliance of permitted facilities. Once the final draft of this concept paper has been completed and approved (following the incorporation of additional comments), it should be used by EPA permit programs as guidance. EPA Program offices affected by these changes are urged to develop plans outlining how they can implement these principles (e.g., policy, regulatory or process changes) consistent with statutory requirements. These plans could take the form of program specific strategic plans that would include short and long-term goals for moving the public performance-based permitting concepts forward. Through these plans, EPA programs will prioritize the recommendations and determine which can be implemented based on resources, other program commitments, and constraints.

Other environmental permitting programs, such as those of state, tribal or local governments, are also encouraged to adopt these principles where appropriate.

B. EPA's Relationship With State, Tribal and Local Environmental Agencies

Before discussing the principles of a modified permitting system, it is important to understand the context in which these principles would be carried out. Rather than issuing most permits itself, EPA generally has established programs to authorize state, tribal and local permitting authorities, to perform most of the permitting. Recently, EPA and the states signed an agreement, the National Environmental Performance Partnership System, aimed at making EPA oversight of states less uniform and prescriptive and more based on performance, so that states with more effective programs and proven environmental results may receive less oversight. A similar approach is being developed for tribes. This concept paper follows the principles of the new EPA/state relationship, with the goals of making EPA permitting systems more performance-based and providing authorized permitting authorities more flexibility to find the best approaches to permitting and data management. The principles in this paper, therefore, should be understood as approaches that EPA would like to encourage through flexibility and assistance to state, tribal and local governments, and not as any kind of new mandates. A key aspect of that assistance is the provision of information from EPA databases. A comprehensive effort to upgrade the quality and breadth of these databases is needed. Some of the individual Task Force recommendations that follow this paper identify specific projects to improve the Agency's delivery of information. In addition, specific changes to the permitting system need to be developed through continued dialogue with state, tribal and local environmental agencies and other stakeholders [2].

C. Permits Improvement Initiatives

While EPA and many other environmental agencies have taken, and are taking, specific actions to improve their permitting systems, there is also a need to re-examine EPA's overall approach to permitting. Toward this end, the Permits Improvement Team (PIT) was founded by EPA's Administrator in July 1994 to comprehensively examine the permit reform efforts going on around the country and determine how, taking the best of these efforts, EPA's overall approach to permitting could be improved. (A compilation of over 100 environmental agency permitting reform projects, entitled ''The Inventory of USEPA/State Permit Improvement Initiatives'' can be accessed via the internet at 'gopher://gopher.epa.gov' or at 'http://www.epa.gov'. After reaching either of these internet sites, locate the search function and type 'Permit Improvement Team' to locate the inventory. A hard copy of the inventory can be obtained by calling 908–321–6782.)

D. Public Performance-Based Permitting

The purpose of permitting is to establish the level of performance needed by facilities or individuals to protect human health and the environment. To do so, EPA has in some cases set performance standards, determined the technical means by which facilities must comply with these

[1] The terms ''emission'', ''release'' and ''discharge'' are used interchangeably in this paper.

[2] The term stakeholder(s) is used in this paper to refer to all groups interested in environmental permitting, including environmental, community and environmental justice groups, regulated entities, and state, tribal and local permitting agencies.

standards, and then required monitoring and inspection to assure their compliance. In some instances, standards were highly prescriptive (including detailed technology or management requirements) that eliminate or severely restrict alternative approaches to achieving compliance. In other cases EPA bases a standard on a technology, which can be viewed by the regulated community as the technology of choice.

It is the contention of this paper that too much time and resources are spent reviewing the *technical means* by which a permittee will comply with permit conditions. While detailed technical reviews were warranted 25 years ago, sufficient progress has been made in verifying technology and increasing corporate environmental responsibility that it is now appropriate to re-evaluate this approach. In instances where technologies are new or unique, detailed technical review may still be warranted; in circumstances where proven or verified technology is being permitted, however, such level of review may be inappropriate. Conducting detailed technical reviews for off-the-shelf technologies has resulted in several negative consequences:

- Permitting agencies are overloaded with routine detailed paperwork to review. This takes time away from other activities, as verifying the equivalency of performance for innovative technologies, causes permit actions to take an unacceptable amount of time, and prevents a more logical and beneficial ordering of priorities. In addition, the excessive focus on the *means* of compliance distracts attention from evaluation of progress on the *end* of improving environmental conditions.
- The regulated community, in addition to sometimes being burdened by unwarranted paperwork, a slow permitting process and unnecessary economic hardships, is in some cases not provided the flexibility—or any incentives—to seek the kind of technological innovations which could *prevent* pollution at its source, and/or provide better environmental results at lower cost.
- The permitting process is largely focused on technical issues, sometimes, beyond the grasp and interest of the general public. The permitting agency and permittee can spend much time grappling with these issues, while the public is usually excluded until such a time when these issues have been resolved through the writing of a draft permit. The public's ability and opportunity to judge the permit process and results can thus be unduly limited.

In order to remedy this situation, this paper proposes a permitting approach called public performance-based permitting, or P3. The essence of this approach is to shift the focus of environmental permitting towards the measurement and assurance of performance, while providing flexibility as to *how* a permittee will meet performance standards. The focus of this system will not simply be performance, but performance within a public arena: to the extent possible and appropriate, the public should be involved in the setting of performance standards and the measurement and judgement of performance. It is recognized that the existing environmental statutes may limit EPA's latitude in fully implementing this approach. As EPA seeks changes to its various permitting programs in accordance with this approach, specific legislative barriers will need to be identified. As opportunities develop to address these barriers, specific legislative changes should be evaluated.

The P3 principle includes three different types of performance. The existing permitting programs each contain elements of this principle. The objective of the permitting programs will be to more fully implement each type of performance.

1. Environmental results: How are permitted activities actually affecting the environment? To improve knowledge and understanding of this performance factor, this paper proposes that permitting agencies increase ambient (environmental) monitoring as a permit condition in selected permits, while comparatively reducing other emissions monitoring and reporting requirements. Ambient monitoring results should be reported to the public in understandable terms. Ambient monitoring would not eliminate individual facility monitoring requirements.

2. Facility compliance: How well are permitted facilities complying with their permits over time? To increase the rates at which facilities comply with their permit conditions, permitting agencies should (1) Establish reporting requirements based on a facility's level of compliance (e.g., reduce reporting for facilities with good compliance records) and potential impact of an activity, (2) create incentives for pollution prevention and technological innovation, and (3) provide compliance assistance to facilities that are making good-faith efforts but finding it difficult to comply (e.g., small businesses and local governments). Furthermore, compliance data should be put in understandable terms and made available to the public.

3. Agency performance: How good a job are EPA and other environmental permitting agencies doing? To ensure that they continue to protect the environment in the most effective and efficient ways possible, this paper recommends that EPA devise methods to measure the performance of permitting systems and to continually improve these systems based on performance data received. These methods shall be provided for the use of state, tribal and local environmental agencies as well. Information on the performance of all permitting agencies should be publicly reported in understandable terms.

The proposals for these three types of performance are detailed in the following sections. But first, it is necessary to discuss in more detail the importance of public participation in the approach to permitting specified in this concept paper.

Traditionally, permitting agencies have limited public participation to public comment periods and hearings at the latter stages of the permit process. This concept paper sets forth a more open process that provides the public opportunities for earlier and more meaningful participation, within the context of the requirements specified in federal and state laws. This model builds on some recent initiatives in public participation, including EPA's RCRA Expanded Public Participation rule and the Chemical Manufacturing Association's (CMA) Responsible Care Program.

These initiatives are based on the concept of direct reporting of information to the public early in the permitting process and in understandable terms. In addition to increasing public awareness regarding facility operations, these programs can serve as a powerful incentive for facilities to reduce their toxic emissions, so as to avoid arousing public concern. P3 would extend these concepts to the public reporting of ambient monitoring results, facility compliance data and information on how well EPA and permitting agencies are performing.

Furthermore, an effective permitting process (for individual permits) requires that the public be involved early and intimately enough that their needs and concerns may be incorporated into permits and other aspects of facility and/or agency policy. Such opportunities can defuse the kinds of adversarial relationships which otherwise may slow and obstruct the permitting system with, for example, lawsuits or permit appeals. A key

element of this approach is determining who will represent the public. The Petroleum Refinery Subcommittee of CSI is addressing this issue in their equipment leaks project. They are considering a process where community members would be ''self-selected''; meaning if a person volunteered to participate they would be part of the stakeholders group.

In part to address public participation concerns, the CMA established its Responsible Care program. Under this program, chemical plants are encouraged to establish community advisory panels, through which the facility and members of its surrounding community can establish a continuing dialogue. The Departments of Defense and Energy have developed similar programs to encourage community participation in their environmental projects. Such forums allow the public and the facility new opportunities to educate each other on their respective needs and concerns, and to jointly resolve differences on environmental issues. EPA should encourage the development of community advisory panels at more facilities, by facilitating the establishment of committees in situations where the public and regulated community determine it would be beneficial.

Public performance-based permitting is designed to change the relationships among permitting agencies, permittees and the general public. The permitting process is currently often burdened with mistrust and adversarial relationships among all three of these parties. If these relationships can be rebuilt on a basis of trust, partnering, accountability and cooperation, the most serious obstacles to an effective and efficient permitting system will have been removed. (See Figure I)

The PIT specifically notes that there are regulatory or statutory barriers to some of the approaches listed below. The Agency's ability to implement each of these options under current law would need to be investigated further as these options are developed in more detail.

II. Environmental Results

The ultimate measure of the performance of EPA's environmental permitting systems is the condition of the air, land and water. Current permitting systems focus primarily on gathering information about permittees' compliance, but comparatively little information is gathered on the actual effects of permitted activities on human health and the environment. To a large extent, environmental permitting systems also lack the flexibility to restructure and rearrange their priorities in response to such environmental performance data, since they are often set up to issue individual permits based solely on the potential impacts of each facility. However, changes are being proposed in this area as permitting authorities consider ecosystem and community based approaches to permit issuance.

Yet in order to answer public demands for *more* environmental protection at *less* cost, there is a need to determine how to focus more resources on the activities producing the greatest environmental impact, while divesting from activities of lesser significance. To do so effectively, better information is needed on the effects industrial and municipal activities are actually having on the air, land and water.

Establishing ambient monitoring conditions in individual permits may be a long-term venture. It has wide-ranging technological and policy implications for EPA, the states, the public, and the regulated community. EPA needs to research how to perform ambient monitoring in a cost-effective manner, how to collect useful data and how to trace pollution found through such monitoring back to the source(s). Different media present varying challenges: air monitoring, for example, is particularly complex. It might be beneficial to work on these issues in a multi-program team with Office of Research and Development (ORD) support.

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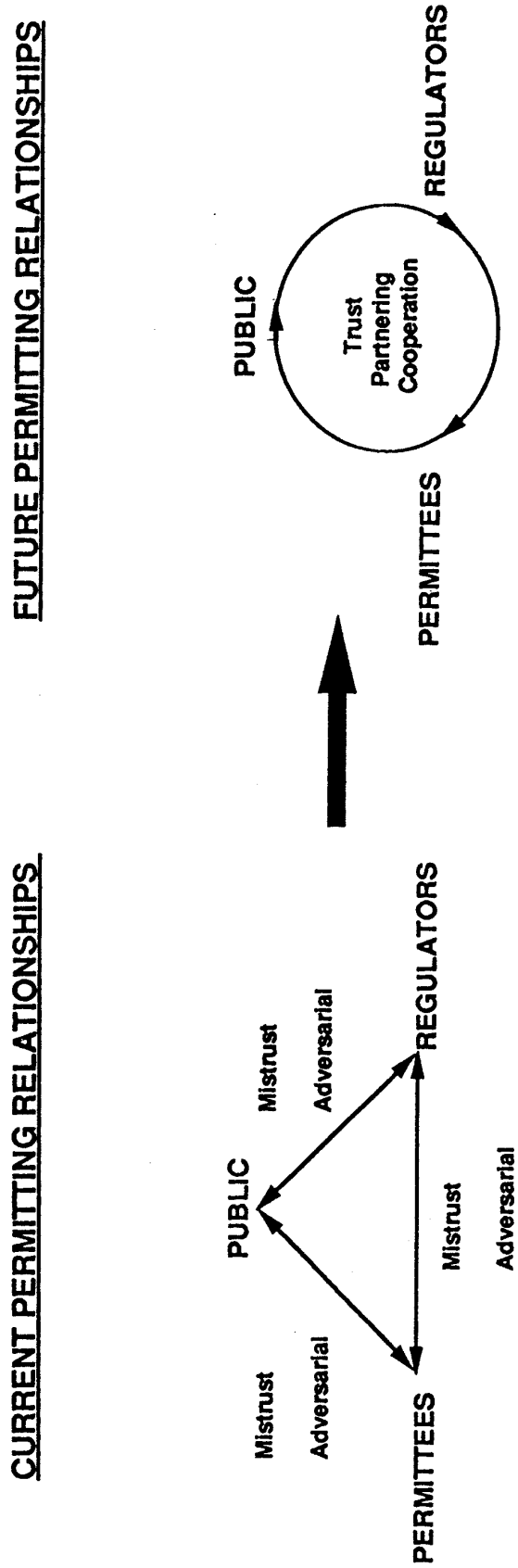
Figure I:
Changing Relationships
Among Players in the Permitting Process



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Despite these challenges, some programs are already beginning to achieve these objectives. The Greater Houston Partnership, for example, is a voluntary program under which Houston-area refineries have set up an air monitoring network. In the short term, EPA should encourage and set up more such pilots and feed all results into a study of how to run effective ambient monitoring programs. These pilots should cover each media (air, surface water and ground water) jointly or separately, and some of the pilots should incorporate the concept of involving the community in monitoring, facilitated by experts from government or the private sector.

At the same time, it is important *not* to increase the information- gathering and reporting burden on permitted facilities. On many occasions, the regulated community has raised concerns about having to meet duplicative or counter-productive compliance monitoring, reporting or record-keeping requirements. In exchange for increasing ambient monitoring requirements, therefore, EPA should concurrently identify and eliminate other compliance information requirements. The PIT recommends that the Program offices, in consultation with the Office of Enforcement and Compliance Assurance and external stakeholders, conduct regulatory reviews that prioritize compliance monitoring, reporting and record-keeping requirements according to the best estimate of their actual value to the environment and determine where different media requirements for compliance information duplicate and/or conflict with one another. The reviews should be followed by proposals and schedules for permit programs to streamline reporting requirements.

This approach is an element in several other EPA initiatives. In response to a Presidential initiative, EPA is examining how it can reduce paperwork requirements by 25%. This effort should be a major portion of the reviews discussed in the preceding paragraph. In addition, EPA's ''one-stop reporting initiative'' aims to streamline reporting requirements, for example by replacing separate facility identification codes used by different EPA programs with a single facility identifier.

Increasing ambient monitoring while decreasing other compliance information requirements at the source would allow permitting agencies to prioritize permitting information requirements based on real environmental impacts. But permitting agencies should be encouraged and allowed to take this idea one step further, and prioritize which facilities will receive full-fledged individual permits and which facilities can receive general (non-individual) permits or no permit at all, based on certain conditions or levels of emissions (this would require statutory amendments for some programs). The better ambient information becomes, the more precisely permitting agencies can and should gear environmental permitting systems to the most significant risks to the environment. This could entail protection of high quality areas as well as focusing on areas where environmental standards are not being achieved.

Since EPA began issuing environmental permits in the early 1970's, there have been a number of instances where either general permits or permits-by-rule have been used (e.g., RCRA permits-by-rule are routinely given to Publicly-Owned Treatment Works and the development of numerous general permits for water discharges). These permits were issued to replace individual permits requiring less administrative oversight. In addition, current Agency initiatives are exploring ways to streamline permitting so that it works more efficiently, encourages innovation, and creates more opportunities for public participation.

One of the major efforts is CSI. One of the six main areas targeted by the six CSI sectors is permitting. CSI subcommittees are reviewing and identifying areas where permitting requirements could be consolidated across programs and where program specific requirements could be simplified. The CSI subcommittees are also working with the states to explore opportunities to coordinate permits across programs. As an example, the Iron and Steel subcommittee is working on two permitting projects: multimedia permitting at a mini-mill and a streamlined permit process.

The PIT's Alternatives to Individual Permits Task Force has identified two criteria to be used to determine when either general permits, permits-by-rule, hybrid permits, or conditional/de-minimus permits might be used. These criteria are:

- Issue permits only where there is a real or potential adverse environmental impact and the regulatory agency needs to be involved (add value) in developing proper controls. Inclusion of these criteria would require enactment of amendments to certain environmental statutes.
- Issue *individual* permits only where there is a potential for significant environmental impact or high degree of variability in regulatory requirements at individual facilities.

It is important that the public be involved in the development and implementation of any alternatives to individual permits, and that adequate compliance and enforcement programs be put in place where alternatives to individual permits are developed.

In the long term, and in conjunction with the pilots and research discussed above, —and recognizing the legal constraints that may exist— EPA Program offices should revise policies and regulations to provide state, tribal and local permitting agencies more flexibility and guidance to: increase ambient monitoring, reduce end-of-pipe/stack monitoring and reporting requirements, adjust databases to focus on ambient data, and tier permitting systems based on the actual environmental impacts of different types of facilities and activities. Some programs (e.g. OW) are already developing guidance for reducing reporting and monitoring requirements.

III. Permittee Compliance

A. Hierarchy of Permitting Standards

While permitting systems need to be better geared towards actual environmental impacts, as discussed above, they still must include sufficient monitoring to determine permittee compliance. The key is to make permitting systems *less prescriptive* and *more performance-based,* or in other words, to continue to tell a permittee *what* standards to achieve, but to no longer mandate, in most cases, *how* they are to achieve them.

This more flexible approach is designed to:

- Help the environment by encouraging pollution prevention;
- Help permittees by giving them the opportunity to develop more cost-effective (and equally or more environmentally effective) approaches to pollution control and prevention; and
- Help permitting agencies by allowing them to shift resources from extensive engineering and paperwork reviews to a focus on establishing ambient monitoring programs, environmental problem analysis, standard setting, compliance assistance and enforcement.

Permitting based on performance standards rather than on technology or management requirements is not a completely new idea. EPA's NPDES program, for example, currently uses such an approach to a large extent. Performance-based permitting will now be the preferred approach, wherever

feasible and appropriate, for all of EPA's permitting programs, and state, tribal and local governments will be provided the flexibility and guidance to implement similar approaches. Programs not using performance-based permitting should evaluate why that approach is not appropriate (e.g., see Underground Injection Control (UIC) example below). This evaluation should be done in writing and could be incorporated into a program's strategic plan, described above.

Thus, EPA programs will follow the hierarchy of preferred approaches shown below in setting permitting standards:

i. Set performance standards based on ambient environmental goals.

ii. Set performance standards based on technological achievability.

iii. Set technology- or management-specific standards.

The ideal approach is where EPA sets performance standards based on actual environmental needs and projected impacts. EPA and other environmental agencies should follow this approach wherever possible and appropriate. It may be appropriate to combine the above approaches in an overall permitting system (e.g. establish a base level of performance and only require higher levels of performance where environmental conditions are not being achieved). This later approach is currently prescribed by statute in many of the Agency's permitting programs.

In cases where EPA is not able to establish permit conditions based on environmental needs, e.g., due to costs and complexities involved with obtaining useful ambient data, or due to methodological difficulties (there are significant difficulties with implementing ambient standard schemes, including contentious scientific issues), the second-best approach is for performance standards to be based on what is technologically achievable. For example, based on EPA's knowledge of the removal efficiency of a particular water pollution control device, the Water program may set a numerical standard that facilities will have to meet in order to be in compliance with statutorily established control standards. While the permitting program will make information available about what technologies are capable of achieving that standard, it will allow the facilities to make their own determination of what technologies to use to meet the numerical standard. In some cases, facilities may substitute a technology or procedure at earlier stages of its process, rather than at the end of the pipe or smokestack, so as to more efficiently prevent pollution and save having to deal with its consequences.

There will be instances in which technology- or management-specific standards are warranted. For example, the underground injection control (UIC) program has a non-degradation policy backed up by engineering requirements that are supported by industry as well as by the permitting agency. In this program, the cost of ambient monitoring to ensure compliance would be excessive compared to establishing technical requirements.

B. Increasing Facilities' Operational Flexibility

In addition to allowing permittees the flexibility to determine the technical means by which they meet EPA standards, there are several other ways to increase permittees' operating flexibility. Permitting agencies should consider these alternatives and incorporate them into their permitting processes as appropriate. Any alternatives that provide increased flexibility to the regulated community need to ensure that the requirements are enforceable.

First, permitting agencies' review of permits should be more performance-based. This would involve reducing review steps to those needed to reasonably demonstrate that the permittee will meet performance standards. Upfront technical (engineering) reviews, therefore, would be reduced or even eliminated where possible and appropriate. In general, where technologies are already proven or verified, there would be less need to perform technical review as part of the permitting process. EPA should give state, tribal and local governments the flexibility to reduce such reviews. EPA Program offices should evaluate existing regulations, policies and priorities that limit this flexibility and make appropriate revisions where authorized by statute. In addition, EPA should evaluate whether to shift grants funding from this stage of the permitting process to other more productive stages (such as compliance assistance and enforcement). This flexibility in use of grants is consistent with the Performance Partnership Grant program proposed in the FY96 EPA budget.

As an example, lengthy and detailed technical reviews may often be necessary under the RCRA program for most land disposal and combustion facilities, but may be less necessary for many standard container and tank storage operations. The PIT is working on a project with California and Texas to develop a general (non-individual) permit for this class of facilities, thus substantially streamlining the RCRA permitting program.

As noted in Section II, permitting agencies should also be given the leeway to reduce reporting and compliance monitoring requirements which are deemed to be unnecessary or duplicative.

Second, permitting agencies should be allowed to reduce the number of times permits need to be formally modified. Currently, lengthy permit modification processes discourage facilities from making needed process changes—including changes which could *reduce* emissions. Generally, permit modifications should be required only where process changes will increase pollution, or are needed to ensure proper operation or monitoring of a facility (this is likely to require regulatory revisions in some permit programs). Permitting agencies should be able to tailor their permit modification requirements by facility; facilities with good compliance records may be made subject to less prescriptive requirements. Each EPA permitting program should review their modification requirements and make appropriate revisions to only require permit modifications where needed to protect human health and the environment.

As discussed in Section I–D above, permitted facilities should be encouraged to establish mechanisms for conducting regular dialogue with the public, such as community advisory committees. Major changes in plant operations may well be appropriate topics for dialogue regardless of whether a permit modification is required.

Third, permitting agencies should use the permitting process to encourage municipal and industrial facilities to practice pollution prevention. One of the primary purposes of making permitting performance-based rather than technology-based is to encourage and allow facilities to pursue innovative technological approaches to preventing pollution at the source. However, additional incentives and technical assistance are needed. In addition to pollution prevention technologies, the permitting system should encourage the use of more cost effective innovative technologies of any type, where practicable and consistent with legal requirements.

In many cases, encouraging pollution prevention and innovative technologies will require facility-specific actions, e.g., drafting a flexible permit that allows the permittee discretion to do what is needed to prevent pollution. This is the approach of a major EPA initiative, Project XL, under which

facilities are exempted from certain regulatory requirements if they can demonstrate that they will achieve better environmental results through other means. In addition, the PIT is working on a project with the state of New Jersey, under EPA's Environmental Technology Initiative (ETI), to develop and implement a protocol to encourage the utilization of innovative technologies and pollution prevention.

ETI is also sponsoring more than two dozen other projects, programs and demonstrations in order to remove barriers to technology innovation in the permitting process, through facility-specific actions as well as more general regulatory, administrative and procedural changes. The Office of Policy, Planning and Evaluation has established a program to coordinate these ETI permitting projects and to provide information and assistance to other EPA offices, state, tribal, and local permitting agencies, and outside groups.

Turning to the additional incentives needed for encouraging pollution prevention the Pollution Prevention Incentives Task Force recommends, among other things: (1)increasing the use of facility-wide permitting, and (2) inserting language in general permits stating that pollution prevention is the preferred means of reaching compliance. Permitting agencies, at their discretion, may decide to use similar incentives to encourage recycling or other beneficial management methods as well as pollution prevention.

EPA's Multi-Media Pollution Prevention (M2P2) Permit Project is currently working with several states on multimedia permitting. This should become the long-term direction of EPA's permitting programs; however, the transition from single-medium to multi-media permitting will take time and careful planning. EPA's evaluation under the M2P2 Project will be used to plan that transition.

C. Public Performance-based Compliance Assurance and Enforcement

Regardless of the level of flexibility provided to permittees, there will always be a need for environmental agencies to monitor, assure and enforce compliance with permits. In fact, where upfront technical reviews are reduced or eliminated, these functions become even more important. Whereas the existing permitting system is in some ways geared to hold all permittees to requirements based on the worst-case scenario, the proposed system would gear requirements to actual environmental performance. A tiered approach to compliance assurance, is one possible approach, under which less significant violators are provided technical assistance, while more significant violators become subject to penalties that should be harsh enough to deter activities that may threaten human health or the environment.

In addition, information about permittee compliance performance should become available to the public in clear, user-friendly databases and publications. It is not enough for an industrial or municipal facility to perform to the satisfaction of the permitting agency; the surrounding community has the right to know how well a facility is complying with its permits and use this information for itself. The concept behind this approach is to employ the power of public disclosure, so that a permittee would be deterred from violating permits by the public relations implications of poor compliance, or conversely be encouraged to maintain a high level of compliance by the public relations benefit of being in compliance.

The Office of Enforcement and Compliance Assurance (OECA), in consultation with appropriate stakeholder, will investigate and recommend ways to publicize, in an easy to understand format, facilities' compliance records. Some possibilities are an annual report (developed by the permitting authority) or requiring compliance reporting as part of a facility's permit. This compliance reporting could be based on a third-party audit, conducted by an impartial auditor, or a self-audit, possibly used at facilities with excellent compliance histories. The developed approach would probably have to be piloted in particular media programs, regions or states before it is ready to be applied to all permitting programs individually and on a multimedia basis. It will also require study by OECA to ensure that this system is successfully designed to be legally defensible, fair, efficient and enforceable.

The criteria behind the compliance reporting should take several factors into account. First, there should be a clear distinction between paperwork violations of little or no direct consequence to the environment and permit violations with the actual potential to damage the environment or human health. It is recognized that certain paperwork requirements are critical to determining permit compliance. Furthermore, continued violation of paperwork requirements should result in enforcement action. Second, there could be separate ranking systems for small and large facilities, since they face different challenges when it comes to permit compliance. (With small facilities, the greatest challenge can be having the time and resources to understand and afford to comply with permit requirements. With larger facilities, the top challenge may be achieving compliance given different process lines, smokestacks, discharge pipes, etc.). Regardless of the final criteria used, they should be clear enough that there is no dispute as to whether or not a facility is in compliance.

Compliance assurance and enforcement activities should also take into consideration facilities' compliance records. This could help EPA and state, tribal and local permitting agencies to better target inspections, enforcement actions and penalties based on the severity of the violations. For smaller facilities with labelling or paperwork violations, EPA may target technical assistance at them (e.g., in cooperation with universities or other programs which provide such assistance) so as to improve their understanding of permit requirements and how to comply with them.

On the other hand, facilities whose non-compliance has the potential to threaten human health and the environment more significantly, should be much higher priorities for reporting, monitoring and attention. In the most severe cases, EPA or the permitting authority should reserve the option of halting a plant's operations until it complies with essential permit conditions. This targeted enforcement approach should make it possible to respond to the worst threats in a more immediate fashion.

IV. Agency Performance

No reform can ever permanently solve every problem with a particular system, because problems and public perceptions of them are constantly evolving. Therefore EPA, state, tribal and local permitting programs should institute systems of continuous evaluation and improvement of their own performance.

As illustrated in Figure II, this system would involve several steps:

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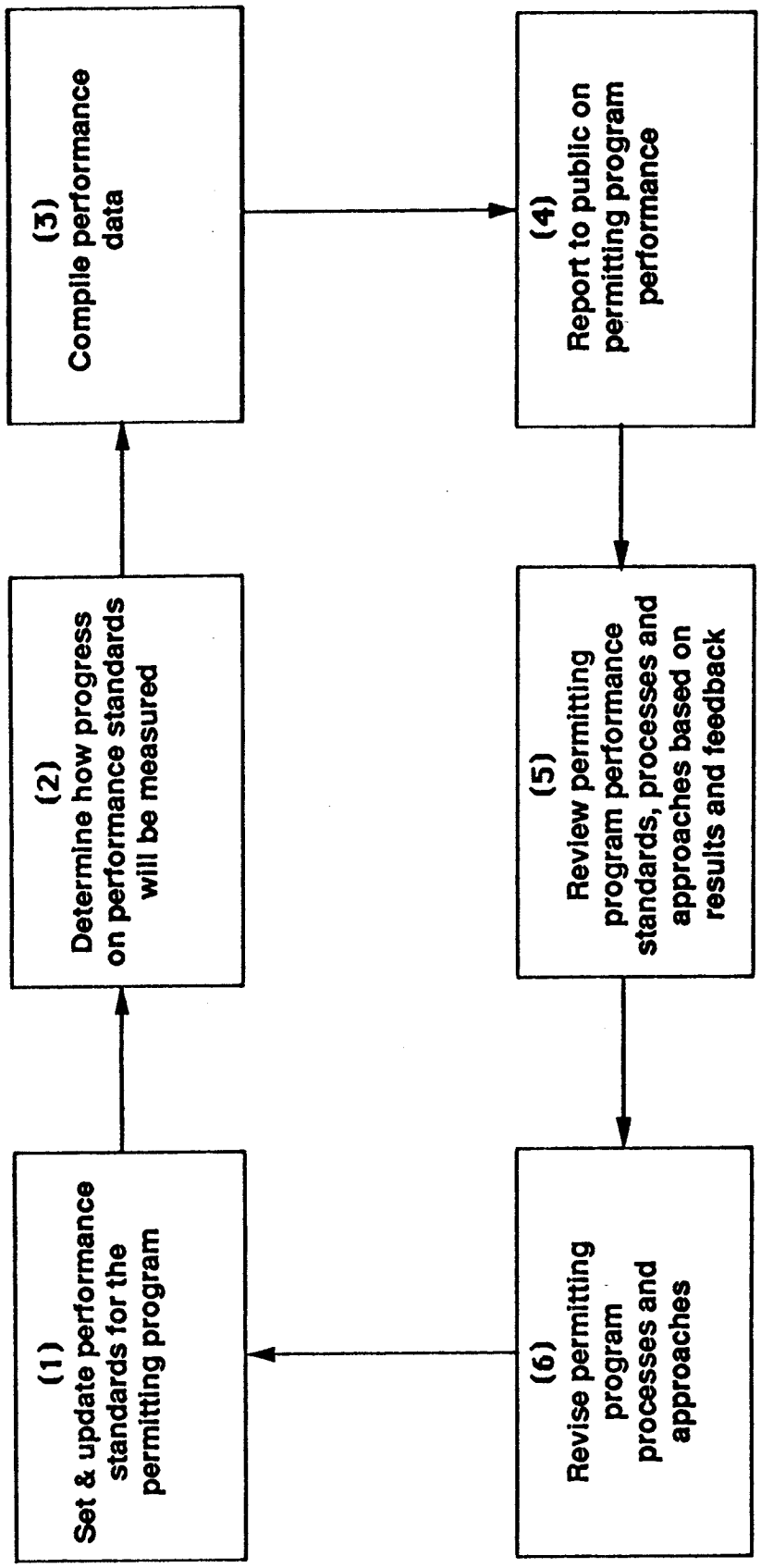
Figure II:
Continuous Performance Improvement System for Permitting Programs



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(1) Identify performance standards for the permit program: the PIT's Performance Measures Task Force has developed draft standards by which permit program performance could be measured, including timeliness of permit reviews, permit backlogs and customer satisfaction.

(2) Determine how these standards would be measured: e.g., design surveys to measure customer satisfaction. As part of EPA's Customer Service efforts, surveys have been drafted for citizens involved in permitting decisions, permit applicants and delegated/authorized permitting agencies. Customer service standards have also been drafted based on these surveys. Surveying will begin in Federal Fiscal Year 1996. This step needs to be carefully designed to avoid burdening agencies with tedious ''bean-counting'' exercises. Streamlined ways of recording performance, including user-friendly electronic means, are encouraged.

(3) Compile performance data: e.g., conduct surveys, measure performance rates, etc.

(4) Report to public on permit program performance: compile results into a regular (e.g., yearly) report on performance which is clearly understandable and easily accessible, in print as well as on the Internet. Establish mechanisms to receive public feedback, via Internet, phone and mail. Permit programs may also decide to hold public meetings or focus groups to obtain more feedback, as appropriate.

(5) Review permit program standards, processes and approaches based on evaluation results and public feedback: permit programs should conduct periodic program evaluations based on the input received from this process. They should determine what changes to implement in their programs to respond to any shortcomings in performance. Performance standards will also need to be periodically revised to respond fully to program needs.

(6) Revise permitting program processes and approaches: implement the changes that have been identified and return to step one of the continuous performance improvement system.

The performance of EPA and other permitting agencies, like the performance of permittees and the actual condition of the environment, needs to be publicly reported in clear, understandable terms. By bringing these types of performance into the light, public performance-based permitting will focus attention on the results of environmental permitting systems, and use those results to continually make these systems more responsive and environmentally protective.

V. Public Access to Information

The implementation of the P3 approach is based on a common denominator; public access to information. Environmental results must be reported in a time frame and manner that will be useful to all stakeholders. This will provide information on ambient conditions and how they relate to established goals. As EPA and the states implement the National Environmental Performance Partnership System (NEPPS), this information will be critical to the joint planning and priority setting that is a key component of this system. Making the environmental results readily available to the public will allow them to participate in the NEPPS process and individual permit applications with a common foundation of information. The provision of facility compliance and permitting agency performance information will provide all stakeholders with important data on how these groups are performing based on defined standards.

The provision of information that focuses on environmental results and performance will replace the need to use activity measures, that count the number of things done, to measure success. Providing all stakeholders the critical information they need to participate in the programmatic and individual issues being addressed by environmental agencies should result in discussions that focus on defining the cause of environmental problems and their solutions rather than the number of permits issued. Thus, public access to information becomes the driving force to encourage behaviors that are designed to protect human health and the environment.

Administrative Streamlining Task Force Recommendations

Goal for Administrative Streamlining

The goal of the Administrative Streamlining Task Force was to improve the permit process by analyzing successful permit programs across the country and recommend permitting process changes (guidance, policy, regulations, procedures) designed to apply these successes more broadly.

Recommendations

1. Create a Predictable, User-friendly Federal Permit Process

a. *Information and Process.* Currently, EPA permitting programs have different processes that follow different timeframes (See Attachment 1). The lack of coordination among these programs, and the lack of predictability created by this situation, can unnecessarily complicate the permitting process for permittees, state, tribal and local permitting authorities, and the public. In addition, EPA's oversight of delegated or authorized permitting programs varies by Region and media program.

Therefore, EPA should to the extent consistent with its various statutory authorities develop one unified, standard timeline model applicable to all of its permitting programs (it may be necessary to have one model for new permit applications and permit modifications and another for facilities that are required to upgrade to meet new requirements). It may also be necessary to have different timelines based on the type of permit (e.g. major or minor). This model timeline is intended to be used as a management tool for permitting agencies to set realistic and desirable time goals; if goals are not being met, permitting agencies should review their processes to identify and eliminate inefficiencies and unnecessary or unproductive procedures.

In the long term, one uniform model should be approved by EPA as non-binding guidance for state, tribal and local permitting authorities. Where allowed by statute or regulation, EPA permitting programs should provide sufficient flexibility to allow authorized permitting authorities to adopt this timeline in lieu of specific program timeframes.

Appendix 2 contains a proposed uniform timeline model. Under this model, the timeline would be subject to extension if the applicant consents to negotiate permit terms, if the applicant must submit further information, or if the permitting agency determines that the project is unusually complicated. The process should include a mechanism that clearly identifies the reason for any time extension and whether the applicant is responsible for any actions that would re-start the clock on the timeline. The applicant's failure to submit needed information would constitute a basis for denying the application. The timeline could include options for enforcing the time limits and ''calling the question'' on the permit action, as determined by each permitting jurisdiction.

Several options for ''calling the question'' on a permit application were considered by the Task Force. One option would include a refund of permit fees for failure to meet the timelines. A few states have implemented this approach. Another option would be a judicial cause of action or other administrative remedy to compel agency

action on the permit, if the controlling statute made meeting the deadline a non-discretionary duty. A third option would be to allow a permit to go into effect automatically if the agency does not meet the deadline. This option is inconsistent with current law and would be contrary to the PIT's recommendations to enhance public participation and is therefore not endorsed by the PIT. In addition, this option may also foreclose the ability of the permitting authority to comply with applicable requirements in federal cross-cutting statutes.

Permits that are issued by the Regions or by state, tribal or local permitting authorities that are authorized pursuant to federal law would have legal impediments to some of the above options. Most importantly, if the last option caused the elimination of required public participation the resulting permit would not comply with federal law.

The proposed timeline includes a notice to the public of either the complete application, the proposed draft permit, or both, depending on program needs and statutory constraints.

Implementation (short term): Each EPA Program office should release a uniform model timeline (by permit type—major/minor) to its authorized authorities as guidance, and establish, as policy, that Regions and state, tribal and local permitting authorities, to the extent allowed by statute and regulations, will be allowed to follow this timeline in lieu of specific EPA permitting program timeframes that may otherwise conflict with it.

Implementation (long term): A high-level cross-office team should be established in FY96 to reach consensus on what changes should be made to EPA statutes, regulations, policies, guidances and processes so as to bring all major EPA permit programs under a single uniform timeline and oversight approach. This team should also define the resource burden of making these revisions along with the potential savings from reducing EPA oversight of delegated or authorized agency issued permits. The PIT has already identified some of the statutory and regulatory barriers to a uniform timeline. The proposed team would, with stakeholder input, agree on the specific changes to be made and work with Program offices to ensure that these changes are implemented or proposed for statutory change.

b. *Single Point of Contact for All Media Permits.* In addition to basic level, point of entry offices, each permitting agency should assign senior permitting personnel to projects in which a facility receives multiple permits. This can help ensure cross-program permit coordination and provide each permittee with one senior staff contact to coordinate the resolution of any cross-cutting issues. In cases where state/tribal/local permits and federal permits are being issued to the same facility, permit coordination is also needed between the permitting agencies.

Example: EPA Region 6 multi-media permit teams.

Implementation: We recommend that a PIT workgroup draft policy and operational guidance, to be issued by EPA's Administrator, for Regional Administrators to implement a single point of contact approach during FY 1996.

2. Encourage and Implement Flexible Permitting Projects

EPA and state, tribal and local permitting authorities should create opportunities for facilities to negotiate alternative permit conditions that maximize operational flexibility and encourage pollution prevention while maintaining or increasing levels of environmental protection. Each permitting agency should identify those situations where a modification can occur without review. Presently, initiatives such as Project XL, CSI, the Environmental Technology Initiative (ETI) and the Clean Air Act Title V permit program are piloting approaches and mechanisms to promote greater flexibility in permits.

Examples of flexible permits:

- Intel Corporation, U.S. EPA, the Oregon Department of Environmental Quality, and the Pacific Northwest Pollution Prevention Research Center developed a flexible Title V operating permit with the goal of accommodating shifts in emissions within the facility and encouraging pollution prevention, while preserving the enforceability of the Clean Air Act's requirements. Under ETI, EPA Regions 1, 9 and 10 are working with the Office of Air and Radiation; the Office of Prevention, Pesticides and Toxics; and the Office of Policy, Planning and Evaluation to expand the Intel flexible permitting experience to several other states and industries. This national expansion of the Intel experience will provide EPA and the States with valuable information and will help ensure the development of enforceable Title V regulations that allow for permit flexibility and the incorporation of pollution prevention and innovative control technologies.
- EPA and Minnesota Pollution Control Agency worked with 3M corporation to develop a flexible permit which, while ensuring all necessary environmental protection, allows the source to make physical and operational changes without triggering major new source review requirements under the Clean Air Act.

Implementation: EPA should, through Regional Offices, serve as a clearinghouse for good examples of flexible permits and serve as a resource to state, local and tribal governments and the public in implementing these approaches. This proposal should be implemented through the electronic clearinghouse recommended in 4d below, as well as through the Regional Permit Process Assistance program recommended in 5 below.

3. Tier Permitting Programs in Proportion to Environmental Significance

EPA should establish a policy and guidance to encourage state, tribal and local permitting authorities to tier their permit programs according to the environmental significance of facilities' polluting activities. Such a policy should allow agencies to reduce monitoring or other reporting requirements for less significant activities so agencies can focus on the actions with the greatest potential for environmental impact.

Suggested ways to do this include: increasing thresholds for small emissions; exploring use of impartial third-party certification systems; exempting certain activities; requiring less frequent/consolidated reporting; expediting the review for low tier permits; and providing incentives for good compliance records and for use of pollution prevention approaches. Some of these approaches would require regulatory and possibly statutory changes in order to be implemented.

Examples: A number of states are moving towards tiered permits, to reduce permit process requirements in accordance with the location of the project, environmental significance of the impact imposed by the project, etc. Examples include California Tiered Permitting for hazardous wastes, Minnesota's Air and RCRA Programs, and the Massachusetts 401 Certification Program.

Implementation: As an FY96 project, a PIT workgroup should conduct an analysis of current approaches to tiered permitting, and then, based on this analysis, draft EPA policy and guidance promoting such approaches where appropriate. This analysis should also focus on projects such as Project XL, to

determine where principles applied to individual facilities (e.g., pollution prevention incentives) can and should be applied to whole classes of facilities.

4. Establish Computer Systems

a. *Integrated facility data bases with Geographic Information System (GIS) interface.* Permitting authorities should combine cross-media information for each facility into a single database which provides instant access and search capability. EPA has initiated this task at the national level through the efforts of the Key Identifiers Workgroup.

Example: Massachusetts DEP's Environmental Protection Integrated Computer System (EPICS) system takes information supplied by 12 separate MADEP Divisions, such as air emissions, hazardous waste and water supply and combines it into a single database. This gives MADEP employees instant access to all the agency's information and allows them to search for data on a facility by entering its name and location. This and a two-year cross-training program have allowed inspectors to do multi-media inspections. EPICS is currently developing an interface with GIS to help site new businesses and to assess cumulative threats to resources for targeted compliance/enforcement.

b. *Permit software systems.* EPA should collect and make available state, tribal, local and regionally developed software for a menu-driven system to train permit-writers and assist them in drafting permits. The system should contain and cross-reference all appropriate regulations and procedures, and provide a mechanism for tracking.

Examples: Maryland/Region 3 software program for NPDES permit writing and tracking. Also, the Indiana Department of Environmental Management has begun a project to develop a menu-driven, expert system to help permit writers in drafting permits. This project was started in an effort to provide training to new permit writers in the state. The expert system takes permit writers through the process of writing a permit, cross-references all appropriate state regulations and internal procedures, and results in a draft permit. This system could also be made available to permittees and the public.

c. *Electronic permitting and reporting.* EPA should facilitate permitting authority efforts to provide permit application forms on disk or by dial-in, issue permits electronically (while providing for public notice, access and opportunity to comment), develop permit tracking capability, and establish electronic facility-based compliance reporting. Model permits (like the RCRA model permit) in electronic format may be provided to applicants to fill-out as a supplemental part of their permit application if they choose to do so. This can greatly reduce the time required for a permit writer to transform permit application proposals into permit conditions. The permit writer can also easily verify that the permit conditions proposed by the applicant meet all applicable requirements. The use of electronic exchanges in permitting will not replace the need to continue to provide appropriate permitting information through non-electronic means.

d. *Electronic database/clearinghouse.* EPA should establish, provide access to and maintain an electronic database/clearinghouse which contains relevant information necessary for permit writers in all media, including: pollution prevention, toxics use reduction, pollution allocation/Total Maximum Daily Load (TMDL) models, site specific protocols, etc.

Implementation: Recommendations 4a–c above should be referred to EPA's Office of Information Resource Management to identify existing capabilities, develop resource needs and schedules to adopt across media Program offices. Recommendation 4d should be referred to Research Triangle Park's Internet Group to identify existing capabilities, develop resource needs and a schedule to allow adoption across media Program offices.

5. Regional Permit Process Assistance

Under the National Environmental Performance Partnership System agreed to between EPA and the states on May 17, 1995, EPA will be reducing direct oversight of authorized state programs. The Regions are in an excellent position to help the states improve their permitting processes by keeping abreast of the latest changes that are being implemented, and sharing that information with the states. Working together, a Region and state would identify areas in need of improvement in a permitting process and evaluate existing approaches that have been utilized to help address the identified area.

Implementation: As an FY96 PIT pilot project, a Region and a state (possibly Texas) should develop an approach whereby the Region would assist the state in evaluating a permitting process. The purpose of this evaluation would be for the Region to help identify improvements that could be implemented. The Region would make use of national clearinghouses and data bases (see recommendation 4d) to help identify approaches that could be of assistance to the state. The Region could also provide any needed training to the state. The state would make the final decision on implementing any improvements.

The Region (with input from the state) would prepare a report on the lessons learned from this pilot and, working with a PIT workgroup, propose an approach that other Regions could utilize in providing assistance to states and tribes in their respective region.

Attachments

1. A table of current permit program timetables
2. A proposed uniform timeline for all major and minor federal permits (see Recommendation 1.a., above)

ATTACHMENT 1.—FEDERAL PERMIT PROGRAMS CURRENT TIMETABLES

Statute	Public notice requirement	Public hearing requirement	Permit duration
RCRA[1]	Notice of draft permit in newspaper and radio. 45 day comment period.	30 day public notice. Required if written opposition to draft permit.	10 years, review every 5 years for land disposal facilities. May be reviewed/modified at any time.
Prevention of Significant air quality Deterioration (PSD).	Notice of draft permit in newspaper. 30 day comment period.	30 day notice. Silent on threshold	No expiration date. New permit required to modify.
Clean Air Act Title V	Notice of draft permit in newspaper. 30 day comment period.	30 day notice. Silent on threshold	Up to 5 years. 3 types of modifications follow new permit process.
NPDES	Notice of draft permit in newspaper. 30 day comment period.	30 day notice. Silent on threshold	5 years.

ATTACHMENT 1.—FEDERAL PERMIT PROGRAMS CURRENT TIMETABLES—Continued

Statute	Public notice requirement	Public hearing requirement	Permit duration
UIC	Notice of draft permit in newspaper. 30 day comment period.	30 day notice. Silent on threshold	Classes I & V: Up to 10 years. Classes II & III: Up to operating life.

[1] These requirements do not include the changes for enhancing public participation included in RCRA Expanded Public Participation Rule.

Alternatives to Individual Permits Task Force Recommendations

A. Background/Approach

The Permits Improvement Team is exploring alternatives to individual permits in order to deliver government services more efficiently, target EPA resources at environmental priorities, and encourage pollution prevention. EPA's National Performance Review included the goal ''Target Permit Priorities'', with the following objectives:

- Issue individual permits only where there is a high degree of environmental concern and where it is necessary to apply tailored or site-specific requirements.
- Use alternatives where possible, such as compliance with self-implementing regulations (e.g., permit-by-rule) and general or class permits.

This report refers to six different types of permitting, defined below:

Individual permitting refers to authorization granted to a person through an adjudicatory process on a site-specific basis. Typically, the permittee initiates the individual permitting process through submission of an application. The permitting agency then develops a proposed permit (which may or may not be developed in coordination with the permit applicant) and publishes notice of the proposed permit for public comment. After consideration of public comments, the permitting agency will issue a final decision on the permit application. In some instances, permitting agencies provide an opportunity for administrative appeal of a final permit before it becomes effective.

General permitting refers to a rulemaking-type process where requirements are developed based on a prototype facility. The permitting agency develops a general permit applicable to facilities or activities of substantially similar nature. General permit authorization is granted after a person registers with the permitting authority its intention to comply with the terms of the general permit. The general permit rulemaking process may be initiated by the permitting agency or by petition to that agency. Depending on programmatic needs and legal requirements, a hearing may be required on whether the general permit applies to a particular facility (or activity). Typically, general permits are issued for environmental activities of ''medium to low'' concern where there is little variability from the prototype facility or activity considered in development of the general permit. Under the Clean Water Act, general permits are widely used, particularly for storm water discharges. Public involvement occurs at time of development of the general permit.

Hybrid permitting refers to a combination of general permitting and individual permitting. Though the permittee is subject to a single permit, the permit terms with which the permittee must comply are developed in part through rulemaking (general permit) and in part through adjudicatory processes to determine site-specific requirements (or to comply with site-specific notice or applicability requirements). Hybrid permitting is not currently used by EPA, so there is no established procedure, but such a process could be established through modification of the general permitting process. Hybrid permitting may be more appropriate than general permitting where there is greater variability from the prototype, or where there is a statutory requirement for site-specific hearings.

Permitting-by-rule (PBR) refers to authorization that does not require subsequent action either by the permit applicant or the permitting authority. For certain RCRA requirements, EPA has issued permits-by-rule when compliance with a permit under one statute is ''deemed'' to be permitted under RCRA. Alternatively, a general permit that does not require registration may be considered to be a permit-by-rule.

De minimis exemptions to permitting refers to the regulatory exclusion of an activity that might otherwise fall within the scope of activity regulated by a statute. Application of the *de minimis* exemption theory is subject to some legal restrictions.

Conditional exemptions refer to activities which are not subject to permitting if the conditions of the exemption are met. Conditional exemptions would be used where it is important to establish some ''non-permit'' substantive standards; e.g., a standard of performance or management practice. Conditional exemptions may represent an enforceable means to establish that a facility/site/source falls below some ''applicability threshold'' for a given permit program (such as a *de minimis* pollution threshold). Conditionally exempt activity is not subject to permitting, but is subject to some enforceable requirement. The conditional exemption theory has not yet been tested in the courts.

B. Methodology for Choosing Recommendations

This Task Force's recommendations were based upon the following criteria:

- *Issue permits* only where there is a real or potential adverse environmental impact and the regulatory agency needs to be involved (add value) in developing proper controls.
- *Issue individual permits* only where there is a potential significant environmental impact or high degree of variability in regulatory requirements at individual facilities.
- *Involve the public* in the development and implementation of any alternatives to individual permits.
- *Ensure adequate compliance and enforcement* activities where alternatives to individual permits are developed.

C. Recommendations

These recommendations need to be implemented by the applicable EPA Headquarters permitting program. As part of that implementation, each Program office needs to review their legal authority for utilizing alternatives to individual permits. If the statutory authority exists but current regulations restrict the use of alternative approaches, the Program office should propose appropriate revisions.

General Recommendations

1. Each Program office should formally consider the appropriateness of using alternative permit approaches. Consider the degree of environmental risk, level of public interest, site variability in application of

requirements and duplication of state, tribal, and local permits in establishing permitting approach.

2. In administering EPA-issued permits, each Regional office should consider the performance of state, tribal and local permit programs that may regulate the same or similar activities. Regional offices may appropriately provide a less rigorous level of review in those jurisdictions where the state, tribal or local permitting authority provides equivalent protection. In some cases, where a facility may operate lawfully without a federal permit, it maybe appropriate for the Regional office to place lower priority on issuing federal permits in such jurisdictions. Where the facility is required to have a federal permit, EPA Program offices should investigate the development of general permits that reference the state, tribal, or local permits.

This recommendation does not solve the underlying problem of authorizing state, tribal and local permitting programs that provide a substantially equivalent program but not identical to EPA's approach. Each Program office should revise their regulations to streamline the authorization process and provide for greater flexibility where allowed by statute. If a statutory barrier exists, the Program office should seek revisions to the statute to provide clear direction on when authorization can occur.

3. Each EPA Program office should share information on permit alternatives being developed and used in federal and state/tribal/local programs throughout the country. The Program offices should consult with their state, tribal and local counterparts to determine the most appropriate information to provide, given available resources. State, tribal and local permitting programs are encouraged to submit copies of any alternative permit approaches in electronic form for ready use by other permitting authorities interested in pursuing similar approaches.

Program Specific Recommendations

1. Stormwater—National Pollutant Discharge Elimination System (NPDES)

a. The Task Force agrees with the Office of Water's ongoing permit reform efforts for Phase I and Phase II, conducted under a Federal Advisory Committee Act (FACA) charter, and recommends they be continued.

b. The Task Force agrees with the further development of general permits as part of Office of Wastewater Management's (OWM) projected permit improvements in the NPDES program in the final 1992 Non-Construction Industrial permit and the proposed Multi-Sector stormwater general permit and recommends they be continued. Specifically;

• The development of general permit language that emphasizes pollution prevention (P2) and Best Management Practices (BMP) in the Non-Construction Industrial permit and the Multi-Sector permit.

• The establishment of appropriate monitoring requirements, based on industry type, water quality, or capability to implement BMP.

c. The Task Force recommends the continued use of the clearinghouse for general permits.

d. Where non-approved states, tribes, or localities are issuing substantially similar permits, EPA Regions should defer to those permitting authorities by prioritizing permitting actions to focus on non-approved permitting authorities *without* substantially similar programs.

2. NPDES—Process Wastewater

a. Because of the need to control specific dischargers, individual permits should be maintained for water quality limited areas, where Total Maximum Daily Loads (TMDL's) are necessary or wherever specific conditions to be addressed in a permit are not amenable to a general permit.

b. Permit duration should be increased from 5 to 10 years or the life of the facility. Under this approach, there should be a provision to allow permits to be re-opened if there are facility, regulatory, or water quality changes. This recommendation requires a statutory change. This increase would be an incentive for states to move toward the watershed protection approach.

c. OWM should develop and expand the use of general permits in non-water quality limited areas and non-TMDL areas through policy directives, development of general permit boilerplates and establishment of a national clearinghouse of general permits.

d. A permit-by-rule (PBR) should be established for de minimis discharges that establishes threshold conditions below which no reporting would be required. They could be based on industry-type, percentage of loading, etc. The rationale for the established PBR for Metal Products should be used to develop de minimis PBR's for other discharge categories.

Recommend PIT FY'96 Pilot Project with the State of Washington, Region X and OW to develop PBR for de minimis discharges.

e. Overall monitoring requirements should be decreased, but include ambient as well as end-of-pipe monitoring. Ambient monitoring would be used primarily to set permit limits where national technology based standards and state water quality based standards have not achieved environmental goals.

The PIT recommends a Pilot Project be conducted by OW, with a Region and State, to determine achievement of program goals.

3. Toxic Substances Control Act (TSCA)

The Task Force's initial recommendations included the consolidation of PCB disposal requirements into the RCRA requirements. However, the current position of the Office of Solid Waste (OSW)/Office of Pollution Prevention and Toxics (OPPT) workgroup evaluating this issue, for a variety of reasons, is to leave the two programs separate but to improve communications to make them more compatible. This Task Force defers to the workgroup on this issue.

The workgroup is identifying options that can be readily implemented to improve the disposal of PCB's, while considering costs to industry, states (unfunded mandates), and EPA. Several potential goals have been identified to help direct the workgroup's efforts:

1. State primacy for the PCB disposal program (one stop shopping) (may require statutory change);

2. Consolidation of hazardous waste requirements (avoid program duplication); and

3. Utilization of EPA grant money for state actions (PCB and hazardous wastes).

The Task Force recommends that the PCB combustion authorization requirements be incorporated into the Air permit program if legally permissible. Other portions of the TSCA program would remain in OPPT. This recommendation is consistent with the recommendation below concerning the Resource Conservation and Recovery Act (RCRA) combustion program. This recommendation avoids the problems associated with incorporating the PCB disposal program into RCRA, but would place all permitted air emissions under one program.

The PIT recommends an OPPT and Office of Air and Radiation (OAR) workgroup be formed to develop appropriate procedures.

4. Safe Drinking Water Act—Underground Injection Control (UIC) Program

a. Shallow injection wells (Class V wells): Continue use of authorization by rule, which has been granted to all Class

V wells, providing that they comply with certain minimal requirements (e.g., well inventory) unless the well may endanger underground sources of drinking water.

b. Injection of fluids related to oil and gas production (Class II wells): Where appropriate, continue use of area permits; promote use of non-individual permits by authorized permitting authorities.

c. Individual permitting should continue for Class I wells (deep wells for industrial, municipal and hazardous waste).

5. RCRA Permit Program (see Attachment for More Detail)

The PIT specifically notes that there are regulatory or statutory barriers to some of the approaches listed below. The Agency's ability to implement each of these options under the current law would need to be investigated further as these options are developed in more detail.

RCRA Base Program

a. Maintain individual permits for facilities requiring operating and post-closure land disposal permits.

b. OSW should establish a general permit boilerplate and promote the use of general permits for non-commercial storage or treatment facilities, including, for example, laboratories. The general permit conditions may need to be supplemented, in some cases, with site-specific conditions identified by the permitting authority or through local public participation. In this situation the permit would be a hybrid permit.

PIT FY'96 project to pilot the use of general permits in the states of California and Texas with Regions VI and IX and OSW.

c. Extend the generator storage time frames from 90 to 270 days for laboratories as part of regulatory re-invention.

d. For hazardous waste combustion facilities, Regional offices should incorporate RCRA requirements into the Air permit program, where both apply; a facility's Air permit would address both Air and RCRA combustion and emission requirements (this is one alternative provided for in EPA's proposed Hazardous Waste Combustion Regulation, Subpart O). Other RCRA requirements (e.g. storage and non-thermal treatment, corrective action) would be addressed through either an individual, general or hybrid permit. This recommendation should be implemented after the proper regulatory authorities are in place. Revised RCRA and CAA regulations are expected to be proposed in March 1996.

RCRA Corrective Action

a. Explore the possibility of allowing a facility to perform corrective action through a state/EPA order cross-referenced in the permit, or through an individual, general or hybrid permit.

b. Prioritize the issuance of corrective action permits and orders by focusing on state programs that are not authorized and that do not have substantially similar cleanup programs. States with substantially similar programs should be a lower priority. The decoupling of corrective action from RCRA permitting for regulated units is being considered as part of the Post-Closure rule (Subpart C) proposal. In addition, the Subpart S Advanced Notice of Rule Making (ANPRM—issued May 1, 1996) requested comment on the use of alternate authorities to compel corrective action. Under this approach a Region would be relying upon another agency to serve as lead in this situation.

c. EPA should focus the majority of its corrective action resources on states without substantially similar cleanup programs. To achieve maximum overall environmental benefit, EPA should also explore allowing EPA RCRA resources to be shifted to support states in clean-up of higher state priority non-RCRA facilities. The legal authority to implement this recommendation needs to be evaluated.

d. Subpart S needs to provide incentives for performing clean-ups by allowing conditional exemptions from permitting for:

—On-site storage of contaminated media and off-site storage and transfer of clean-up waste, especially from spill response activities,

—Non-RCRA facilities performing voluntary clean-ups.

e. Explore the possibility of allowing low-priority RCRA facilities to conduct voluntary (early) corrective action through general or hybrid permits, memoranda of agreement between the facility and the permitting authority that achieve defined performance standards, or through amendments to the interim status regulations. There may be obstacles to using memoranda of agreements, since they would not provide legal protection to a facility that is required to obtain a federal permit.

f. Investigate third-party certification of general and hybrid permits for hazardous waste management that is generated through corrective action activities. In addition, OECA's Office of Compliance is implementing the Environmental Leadership Program (ELP), a major component of which is piloting third-party audits and certification. EPA is also asking for comment on this concept in the Subpart S ANPRM. The Agency should continue to investigate third-party certification by looking at these, the Massachusetts initiative to utilize certified remediation contractors, and other such programs.

g. Fast-track the Hazardous Waste Identification Rule (HWIR) and Definition of Solid Waste Rule, to limit regulation to wastes that are truly hazardous, allow general or hybrid permits to regulate recyclers and utilize the HWIR media rule concept of remediation management plans (RMP) for off-site storage and treatment of remedial waste.

6. Air—New Source Review (NSR) Permit Program

a. The Task Force agrees with the Office of Air Quality Planning and Standards (OAQPS) NSR reform efforts, particularly the following;

- Implementing plant-wide applicability limit (PAL) policy.
- Allowing states more flexibility to match the level of permitting effort to environmental significance. This recognizes that there may be facilities which do not require permits at all.
- Including special provisions to encourage the use of innovative technologies.
- Acknowledging and promoting pollution prevention activities.

If the NSR reforms do not receive stakeholder support, consider establishing a PIT workgroup to conduct an independent evaluation and develop recommendations.

b. Develop a more expansive definition of minor sources through the use of the following:

- The Agency has recognized for some time that the current definition of potential to emit may have been too restrictive. The Agency has and is currently working to redefine potential to emit in a consensus forum.
- Develop and promote the use of general permits by preparing boilerplate language for applicable sources and establishing a national clearinghouse of general permits.

c. State, tribal and local permitting authorities should establish additional de minimis levels for selected minor sources under which no permit would be required, in conformance with existing regulations. This will provide that only true health and environmental risks require permits.

7. Air—Title V Permit Program

a. The Task Force supports the National White Paper and Supplemental Part 70 proposal, and recommends:

- Evaluating techniques to take inherent operating limitations into

account in determining potential to emit.

• Investigating methods to simplify the renewal process to allow for automatic renewal upon recertification that no facility changes have occurred and no new requirements have come into effect since the initial permit issuance.

b. Develop and promote the use of general permits for sources with low actual emissions by preparing boilerplate language for applicable sources and establishing a national clearinghouse of general permits.

PIT recommends a FY'96 pilot project with the State of Iowa, Region VII and OAQPS to develop general title V permits (e.g. for paint booths). This project should be coordinated with the ongoing ETI Title V project.

c. Allow a self-implementation alternative for facilities with actual emissions of less than 50% of applicable standards.

• Implement flexible permits, through the use of plant-wide applicability (PAL) limits.

• Allow states more flexibility in deciding the most effective monitoring methods and controls.

d. Allow state, tribal and local permitting authorities to establish additional de minimis levels for selected minor sources under which no permit would be required. This will provide that only true health and environmental risks require permits. For example, in MA, emissions below 1 ton/year do not require a permit.

D. Attachment

A more complete discussion of the RCRA proposals follows.

Attachment—RCRA Alternative Permitting Recommendations

Task Force recommendations do not cover all aspects of RCRA permitting, but highlight areas both where continued use of individual permits seem most appropriate, as well as areas where alternatives may be particularly useful. Also, as is the case with some recommendations in other programs, there are regulatory or statutory barriers to some of the approaches listed below. The Agency's ability to implement each of these options under current law would need to be investigated further as these options are developed in greater detail.

RCRA Base Program

1. Continued Use of Individual Permits

The Task Force recommends continuing to use individual permits for facilities requiring operating and post-closure land disposal permits. Although some aspects of these facilities could be regulated by general permits or other alternatives to individual permits, the Task Force felt that the potential environmental impacts of these facilities particularly warranted regulatory attention and public comment on an individualized basis.

The Task Force also recognized that combustion facilities (incinerators, burners and industrial furnaces) warranted highly focused regulatory and public attention on an individual basis. However, efficiency could be obtained by having the impacts of these facilities reviewed in concert with air permitting. If so, the RCRA program could issue a general or hybrid permit to address any additional technical requirements not covered by the Clean Air Act permit process (e.g., corrective action), and could also address permit requirements for any ancillary units (e.g., storage units).

2. Ninety-day Accumulation and Treatment for Generators

The Task Force also recommends providing guidance or otherwise clarifying the enforcement discretion available when a facility exceeds applicable time frames or violates any of the management conditions referenced in 40 CFR 262.34. The Task Force recommends that it be made clear that enforcement against such a facility may be handled as a violation of the specific requirements of § 262.34 (e.g., storage over 90 days, failure to mark containers, etc.) rather than as a failure to have a permit. Some prior agency statements have suggested that a facility that failed to mark a container would necessarily be subject to full permit requirements.[3]

3. Third Party Certifications

The Task force recommends consideration of the use of third party certifications both for corrective action and for hazardous waste management requirements. Where, for example, a regulatory agency might otherwise be inclined to require extensive regulatory review of a corrective action, unit design, contingency plan, or other RCRA-regulated activity in the context of an individual permit review, the agency might be able to shift that activity to a general or hybrid permit if the facility notification were accompanied by a third party certification that indicated comparable review has been conducted by an independent third party. There is a legal concern, however, presented by EPA's need to defend information and conclusions in the permitting decision that EPA itself did not develop.

RCRA Corrective Action

1. Corrective Action

Where a state with a well developed cleanup program is authorized for the base RCRA program, but has not yet become authorized for corrective action, the Task Force recommends that EPA consider issuing a ''rider'' general permit that would require treatment, storage or disposal (TSD) facilities receiving state RCRA permits to satisfy corrective action obligations by complying with the requirements of the state's cleanup program. For this approach to be legally defensible, EPA would need to explain the basis for finding that the state controls satisfy federal corrective action requirements. Another option would be for the federal permit to set a schedule of compliance for corrective action measures contingent on completion of the state cleanup in order to see whether further corrective action measures are necessary at that point. For this approach to be effective, EPA must be willing to defer to the State's overall site prioritization system. This may mean that there is less near-term cleanup at RCRA facilities, if there are higher priority non-RCRA facilities.[4]

Under this approach, EPA could then focus its resources and attention on corrective action in states without cleanup programs and on high priority RCRA facilities not otherwise being addressed by the states.

General or hybrid permits could include provisions that authorize low-priority TSD facilities not otherwise receiving regulatory attention to conduct early cleanups, subject to performance standards identified in the general permit (or through use of Memoranda of Agreement between the facility and permitting authority). Again, however, there may be legal barriers to these approaches under the current statute and regulations. An analysis of the possible alternatives to individual permits for corrective action and the legal barriers to those alternatives is ongoing within the PIT and its subgroup on general permits.

Another way to ensure that facilities receive federal permits would be for EPA to issue a permit that simply ''copies'' the state's permit, relying on the state's supporting record. EPA would not develop a record for the permit independently. In this approach, the facility would obtain a federal permit and would not be liable for operating without a permit. However, this approach would be viable only to the extent EPA feels comfortable that it will be able to defend against any permit challenges based on a record developed by a separate entity (*i.e.*, the state). The issue of deferral to the state, in general, is one that is still being examined by the PIT subgroup.

2. Non-RCRA Cleanups

Many facilities that do not require RCRA permits have the potential to trigger RCRA permit requirements while conducting cleanups, whether voluntarily or under State direction. Many persons have noted that the possibility of subjecting a facility to full

[3] *See, e.g.*, In the Matter of Humko Products, Docket No. V–W–84–R–014 (March 7, 1985) at p.20 (facility storing waste over 90 days ''is subject to * * * the permit requirements of 40 CFR Part 270''), p. 26 n. 12; Permit Policy Compendium No. 9453.1989(05), Letter from Sylvia Lowrance to Stephen Axtell, April 21, 1989 (generator who fails to mark accumulation date ''has not met the pre-conditions for the exemption from permitting requirements and is an operator * * * subject to permit requirements'').

[4] EPA sometimes currently defers on a case-by-case basis to other cleanup programs in deciding how to address corrective action in a RCRA permit. In considering this recommendation, EPA might also consider whether its current practice sufficiently meets the goals of this recommendation, or whether there are alternative means of achieving a similar result through improvements on existing practice. For example, are there better ways of reflecting this deferral process in the permit than is currently the case.

RCRA permitting, including fenceline-to-fenceline corrective action for cleanup activity is a disincentive to conducting focused cleanup and conversion of brownfields. EPA is currently developing approaches to many of these problems through the HWIR rulemakings. The Task Force recommends considering alternative approaches to permitting through the following scenarios which may go beyond the HWIR concepts in some applications:

- off-site storage and transfer of cleanup waste, where the cleanup activity is being directed or supervised by EPA or a State regulatory agency;
- on-site storage of contaminated media (includes voluntary cleanups as well as cleanups under regulatory supervision) (action would be subject to best management practices); and
- activities at facilities not currently subject to RCRA conducting voluntary cleanup.

Of these various options, the last is most expansive, and goes beyond the more limited proposal for on-site storage of contaminated media. The second and third recommendations go beyond the HWIR approaches currently being considered in that they would apply to voluntary cleanups as well as cleanups under regulatory oversight.

Enhanced Public Participation Task Force Recommendations

A. Background

An important ingredient for improving the permitting process is improving and expanding public involvement in the process. The Enhanced Public Participation Task Force was tasked with developing recommendations for providing opportunities for early and more meaningful public participation, including provisions for addressing environmental justice concerns.

Public participation has many aspects. It can be seen as involvement through participation in the permitting process—e.g., providing notice of upcoming events, or opportunities for meetings with businesses, communities, and regulating agencies. It can also be seen as involvement through access to quality information—e.g., businesses need quality information to identify opportunities to prevent pollution and save money, and communities need access to information to participate in decision-making in a meaningful and informed manner.

The Task Force looked into both areas, and developed five recommendations. The first three recommendations discussed in this report focus on short-term products (i.e., ones that might be developed in FY 1996) that are intended to fill an immediate need for information. These products may be used by permitting agencies, industry, and communities alike to (1) learn about potential ways to involve themselves or each other in the permitting process, and (2) find out what types of information are available, and how they can access it. These three recommendations were discussed with stakeholders and modified to incorporate their comments.

The remaining two recommendations were developed based on general public participation discussions that took place during the PIT's stakeholder meetings. These recommendations are good candidate projects for the continuing efforts of the PIT.

B. Task Force Recommendations

1. Develop an ''Easy Reference'' Guidance for Public Participation Activities

Description: The purpose of the guidance should be to serve as a valuable reference of public involvement activities. The guidance should not cover every possible type of activity. Rather, it should serve as a supplement to existing guidance developed by EPA Program offices, trade associations, or environmental groups. It could be used by businesses, communities, and permitting agencies in putting together public involvement strategies appropriate for particular situations. We recommend that the guidance be kept fairly short, perhaps 20 pages, in order to facilitate quick reference. The guidance should consist of three sections: an introduction, a matrix of public involvement techniques, and an attachment with additional reference information.

The introduction should lay out both the purpose and limitations of the guidance. The introduction should also:

- encourage all stakeholders—regulators, facilities, and communities—to take an active role in opening up the permitting process and promoting meaningful public involvement;
- urge industry and communities to explore innovative public involvement programs, such as the Responsible Care Program (through CMA) and Good Neighbor Agreements (through the Good Neighbor Project); and
- encourage regulators, facilities, and communities to coordinate public involvement activities across media programs whenever appropriate and feasible.

The matrix of public involvement activities should list a wide variety of public involvement techniques, and provide a brief description of the activity (technique), and some of its advantages and disadvantages. Any activity currently required by an EPA Program office will be footnoted as a regulatory requirement. Since final recommendations regarding alternatives to individual permits have not yet been implemented, the easy-reference guidance should not attempt to ''tier'' public involvement activities by type of permit. The guidance should, however, have a mechanism to help people determine what activities they could use.

For its ''first edition,'' the guidance should identify ''Level I'' and ''Level II'' activities. Level I activities are those that should be considered for use in every situation, regardless of the type of permit, type of facility, or level of community interest. Level II activities represent a variety of ways to go beyond basic approaches to public involvement, and should be considered for use as necessary to meet the needs of the situation at hand. When developing subsequent editions of the easy-reference guidance, the mechanism for ''ranking'' activities (i.e., Levels I and II) should be re-evaluated to determine if it is still appropriate or if it should be replaced.

The attachment for additional resources should include: (1) the main telephone numbers of all State environmental permitting agencies; (2) the main telephone numbers of all EPA regional permitting offices; (3) a list all of the EPA-sponsored hotlines and information centers, and (4) a recap of the activities required by each EPA media Program office and a list of resources (e.g., guidance manuals) available through those offices.

Implementation: The RCRA Permits Branch in the Office of Solid Waste should take the lead on developing the initial edition of the easy-reference guidance. A draft of the guidance should be shared with a PIT workgroup for review and comment, as well as with the Siting and Public Participation Subcommittees of the National Environmental Justice Advisory Committee (NEJAC).

Hardcopy Distribution: The PIT should distribute copies to its stakeholder mailing list. The PIT should also provide camera-ready copies of the guidance to the Office of Communications, Education and Public Affairs (OCEPA) and to the Office of Regional Operations, State/Local Relations (OROSLR) so they may distribute the guidance to their respective contacts and mailing lists. Furthermore, each media program office at the federal, state, local and tribal levels should also be encouraged to distribute the guidance as widely as possible.

Electronic Distribution: The Enhanced Public Participation Task Force leader should coordinate with appropriate Agency personnel to post the easy-reference guidance on the Internet. Access to the guidance should be provided through EPA's home page as well as through each media office's menus.

Training: The Enhanced Public Participation Task Force should coordinate with the Training Task Force to evaluate potential ways to provide training, if necessary, on techniques included in the easy-reference guidance.

2. Utilize the Environmental Justice (EJ) Public Participation Checklist as Guidance to the Extent Appropriate and Feasible

Description: The environmental justice movement has sparked a lot of discussion on ways to improve communications and working relations among agencies, industries, and communities. The InterAgency Working Group on Environmental Justice, led by EPA, developed a Public Participation Checklist that lays out ways to identify, inform, and involve stakeholders (e.g., environmental organizations, business and trade associations, civic/public interest groups, grassroots/community-based organizations, tribal governments, and industry). It reflects a combination of: guiding principles for setting up and conducting activities, such as public meetings; specific activities for ensuring widespread and meaningful involvement; and recommendations on how to effectively carry out those activities.

Although the checklist was initially developed in the context of environmental justice, to help federal agencies prepare for the first public meeting to discuss their EJ strategies, it embodies sound principles that apply to public participation for all communities. Therefore, the Task Force recommends that:

(1) EPA (through its Office of Communications, Education, and Public Affairs) should widely distribute the EJ checklist for use as guidance, so that permitting agencies, businesses and the public may benefit from it.

(2) A PIT workgroup continue to coordinate with the Office of Environmental Justice (OEJ) and the InterAgency Working Group on Environmental Justice in order to promote consistency in Agency approaches to enhancing public involvement. The Task Force should forward any suggestions it receives for modifying or enhancing the EJ Checklist to the OEJ and/or InterAgency Working Group.

Implementation: Public Participation Task Force representatives should meet with contacts in OEJ to: (1) review and discuss suggestions the PIT received regarding the Checklist, (2) develop an introduction to accompany the Checklist (describing its origins, etc.), and (3) to plan for further interactions between the two groups. Any changes to the Checklist should be made by OEJ or the InterAgency Working Group, since they originated the Checklist. Their continued ''ownership'' of the Checklist, and our combined efforts to keep the list current, will help ensure that the two teams continue to work in partnership to address environmental justice concerns, particularly in the context of public involvement. If OEJ (or the InterAgency Working Group) chooses to revise the Checklist, a PIT workgroup could provide assistance.

Hardcopy Distribution: Once the list is revised, OEJ should provide a camera-ready copy of the Checklist to the Office of Communications, Education and Public Affairs (OCEPA) for distribution to its contacts and mailing lists. In addition, camera-ready copies should also be provided to the Office of Regional Operations, State/Local Relations (OROSLR) so they can distribute the Checklist to their contacts and mailing lists. Finally, each media program office at the federal, state, tribal and local levels should be encouraged to distribute the Checklist as widely as possible.

The Task Force assumes that OEJ sends the checklist out to its contacts across the country, and that these contacts include EJ and community groups. In order to target industry for receiving copies of the Checklist, OEJ should provide the Checklist to trade associations for distribution to their member companies.

Electronic Distribution: The Task Force leader should coordinate with appropriate Agency personnel to post the EJ Checklist on the Internet. Access to the Checklist should be provided through EPA's home page as well as through each media office's menus.

3. Develop an Inventory of Mechanisms That Promote Access to Environmental Information

Description: Access to information is an essential component of public involvement. Meaningful, quality information is needed by regulators, regulated industries, and the public alike in order to promote sound environmental decision-making. Within the federal government, offices are revisiting what types of information should be collected and how information may be more readily shared.

An inventory with abstracts of existing sources of information, as well as of the efforts underway to improve quality of and access to information, and the appropriate contact person or office for each, would be a useful reference document. It could be used to inform agencies, businesses and the public of the wide variety of mechanisms available to them.

Development: The inventory of mechanisms should be developed under the direction of EPA's Office of Information Resources Management (OIRM). Identifying and describing the numerous and diverse data systems, information sources, and so on is beyond the scope of PIT resources; however, a PIT workgroup should meet with OIRM to discuss the project and to be available to provide assistance on an as-needed basis.

Primary focus of the inventory should be on Agency automated sources of information (e.g., data systems, bulletin boards), ''hardcopy'' information sources (e.g., Toxic Release Inventory (TRI) Report), and means of accessing information sources (e.g., through the Freedom of Information Act (FOIA) process, the Internet, via the National Technical Information Service—NTIS). The inventory should also, to the extent possible and feasible, discuss efforts-in-progress (e.g., the Key Identifier and One-Stop Public Access and Reporting Initiative). The inventory should include innovative systems promoted by Program offices to improve community involvement and help empower communities (e.g., Landview II being used by the Office of Solid Waste and Emergency Response). Finally, the inventory should include mechanisms to obtain access to pollution prevention information, such as on-line EPA computer systems like Enviro$ense or the Technology Transfer Network.

The inventory of mechanisms should be presented in an understandable, user friendly manner. In addition, because not every agency, business and member of the public will have electronic access to bulletin board systems and the Internet, proposals for increasing access to information should also include making material easily available in the traditional manners (e.g., printed copies at agency offices, in information repositories, mailed to interested parties, announced in press releases or through radio ads).

Distribution: Distribution of the inventory should be coordinated by OCEPA. The inventory should be available in hardcopy format as well as through the Internet.

In addition, OCEPA should investigate more effective ways to publicize the many sources of information the Agency has, and the avenues to obtaining that information. For example, the Agency develops a thick (over 600 pages!) publication entitled ''Access EPA''—a comprehensive directory with detailed descriptions of the Agency's information resources. Unfortunately, relatively few people know of, or have access to, ''Access EPA.'' OCEPA should look into the feasibility of using innovative mechanisms to more widely and effectively distribute this directory, such as entering into an agreement with a national bookstore chain to get their stores to carry ''Access EPA'' and/or certain other EPA publications.

4. Explore, and Possibly Conduct Pilots for, the Development and Use of Comprehensive Multi-Media Community Involvement Plans

Background: Under the Agency's current regulations, there are various public participation requirements in each media program area—hazardous waste, water, and air. The requirements focus on the individual media permit, and are not consistent across programs. In meeting their regulatory obligations for each media permit, industries and regulators alike often create more confusion than clarity among members of the public who, for the most part, do not segment their involvement along statutory lines—their interests lay with the facility in its entirety. Moreover, having to conduct multiple, yet similar, activities (e.g., one public hearing for the air permit and another for the RCRA permit) imposes an unnecessary burden on a facility; having to keep track of and attend these multiple activities imposes an unnecessary burden on the public. Further exacerbating the problem is the way information about a facility is collected and reported—also a media-by-media approach. No clear picture of the facility as a whole, its total emissions or releases, its comprehensive compliance record, is readily available.

Discussion: In order to create an environment that truly fosters effective interactions between facilities and their neighboring communities, the Agency needs to make the entire public participation process more user-friendly. Using Community Involvement Plans (CIPs), in concert with some programmatic adjustments from other PIT Task Forces, could accomplish this objective.

It is envisioned that a facility, in close coordination with community stakeholders, would be responsible for drafting a CIP. The elements of a CIP would most likely vary, although certain core elements may ultimately be defined. In essence, the CIP would serve as a vehicle through which a facility and a community could form a multi-media approach tailored to meet their particular situation. They could address issues on an aggregate basis, instead of on the media-by-media basis perpetuated by EPA's current structure and regulations. At a minimum, a CIP should set objectives for educating the community on the facility and its operations and for providing routine opportunities for information exchange. Techniques to achieve these objectives could include: community advisory panels, facility tours, integrated compliance reporting, and so on.

The appropriate role of the regulatory agency would also need to be laid out in the CIP. There would need to be an incentive offered in exchange for a facility undertaking the integrated approach to public involvement embodied by the CIP concept—for example, expedited permit processing, aggregated (multi-media) permit processing, or relief from media-specific public participation regulatory obligations. This does not mean, however, that the regulator does not continue to play a key role—the permitting agency would need to interface with both the facility and the community.

Implementation Ideas: The Task Force recommends that the CIP concept be piloted with a few facilities and their neighboring communities. It may be possible to coordinate this effort with other Agency initiatives, such as Project XL or Brownfields, that are intended to pilot innovative approaches to environmental management. The PIT could take the lead on evaluating the results of the pilots. If the efforts prove successful, the Agency should promote widespread use of CIPs and pursue the regulatory changes needed to implement the incentives described above.

• Pros—There are many potential benefits to be gained by using CIPs. For example, they move us away from a ''command and control'' approach by allowing flexibility to follow a plan that makes sense for the situation at hand. If CIPs ultimately replace media-specific public participation requirements, there would still be a basic ''level playing field'' by virtue of the fact that everyone would have to develop a plan founded on mutual (facility, community, regulator) needs and concerns. Finally, CIPs enable a facility and a community to deal with issues on an aggregate basis, which may help to move EPA towards a more integrated approach to environmental management.

• Cons—Providing some relief from current media-specific public participation requirements in exchange for using CIPs will necessarily result in a lack of consistency in approaches to public participation. The lack of consistency could create confusion for industry, communities, and regulators alike—no one would be certain what they should do or what their opportunities for involvement are. In considering this aspect, however, it is important (1) to remember that there is already inconsistency in public participation requirements across the Agency's media programs; (2) to question whether the desire for consistency outweighs the need for flexibility; and (3) to focus on the need for improved results.

5. Develop a Series of Case Studies on the Effectiveness of Public Participation Activities

Description: Guidance materials and checklists for promoting public participation provide very useful tools. However, there is a lot that can be learned from real world successes and failures as well. A compilation of actual case studies would be a useful tool to help permitting agencies, industry, and communities put suggested public involvement activities into a context meaningful to their own situations—in other words, it gives people something concrete they can relate to.

Development: The Task Force recommends that a PIT workgroup compile a number of case studies as a project in FY 1996. The PIT should collect existing case studies from various sources, such as (but not limited to) EPA Program offices, Regional or State community relations offices, and environmental justice groups. Further, the PIT could develop its own case studies based on recommendation 4, above.

Performance Measures

Task Force Recommendations

Background

An important aspect of improving the environmental permitting process concerns how the performance and success of the permitting programs are measured. Too often in the past, regulatory agencies have measured success based on the number of permits that have been issued. This ''bean counting'' has been identified as one of the problems in the current system that needs to be improved.

On September 11, 1993, President Clinton signed Executive Order 12862, Setting Customer Service Standards. This Order, in part, requires each

department and agency to ''post service standards and measure results against them''. The performance measures presented below have been prepared to comply with the Executive Order. These measures should be publicly available so that all Agency stakeholders can review the performance of the permitting programs.

The Performance Measures Task Force developed the following performance and tracking measures based on the input received at stakeholder meetings held during the PIT project and the written comments received on the draft recommendations. The performance measures should be used to evaluate how a permitting program is doing in achieving environmental results and customer satisfaction. The measures focus on the performance of the permitting process and are designed to evaluate the system as a whole. These measures should help EPA identify where changes may be needed in a program to achieve the desired results. The tracking measures provide information on changes to the permitting processes over time and should be used to identify areas of opportunity for process improvement.

The performance and tracking measures are broken down into the following three categories:

1. Process—those measures that specify how the permitting process is doing compared to established criteria;

2. Results—those measures that determine whether the permits are having their desired outcome; and

3. Customer Service—those measures that evaluate how the general public and regulated community feel about the permitting process.

It is recommended that the performance and tracking measures be piloted in a Region that is still issuing a significant number of permits. This will allow the measures to be field tested and any modifications made prior to full implementation. The Permits Improvement Team would assist the Regional office as necessary.

It is further recommended that each Regional office provide these measures to any state, tribe or local government, that is authorized to issue permits, for their consideration. These permitting authorities should not be required to adopt these measures. They should be free to modify them or develop their own measures of a successful permitting program.

Generic Performance Measures

Process

1. Timeliness

Each Regional office that is issuing permits should establish processing time goals for each type of permit they issue (presented as a percentage of applications processed within a specified timeframe). Each Regional media permitting program should determine the appropriateness of dividing their permit universe based on the degree of environmental impact (e.g. minor, significant minor, major). Four distinct processing times could be established to cover the entire permitting process, from receipt of application to permit effectiveness. In addition, the total processing time of each permit should be a tracking measure.

Example: For (type of permit[5]), the time required from receipt of an application to agency determination that the application is complete is as follows:

____% determinations made within 30 days;
____% determinations made between 30 and 60 days;
____% determinations made between 60 and 90 days.

For (type of permit[5]), the time required from receipt of a complete application to issuance of the proposed (or final if no public comment is necessary) agency decision to approve or deny the permit is as follows:

____% proposals/decisions made within 60 days;
____% proposals/decisions made between 60 and 90 days;
____% proposals/decisions made between 90 and 180 days.

For (type of permit[5]),the time required from the issuance of the proposed decision to approve or deny the permit to the final agency action is as follows:

Where limited and straightforward comments are received and no public hearing:

____% decisions made within 60 days;
____% decisions made between 60 and 90 days.

Where substantial and complex comments are received and no public hearing:

____% decisions made within 90 days;
____% decisions made between 90 and 120 days.

When a public hearing is held:

____% decisions made within 180 days;
____% decisions made between 180 and 240 days.

For (type of permit[5]), that are appealed, the time required from issuance of the Region's final permit decision to the effective date of the permit is as follows:

____% effective within 90 days;
____% effective between 90 and 270 days;
____% effective between 270 and 455 days;
____% not effective within 455 days.

Purpose: To have the Regional offices focus on each step of the permit process. The time required to process a permit is influenced by the performance of both the regulatory agency and the permittee as well as by the level of public comment. To achieve the most rapid processing of a permit as possible the agency and permittee need to work together (and with the public as necessary). Therefore, this performance measure is written to identify how long the permit process is taking for each of the major steps. If the actual processing time of the Regional office is longer than the established goal, steps can be identified to improve the performance in that area.

2. Number of Pending Permits

Each Regional office that is issuing permits should establish a goal for the maximum number of permits for new discharges, emissions or releases (either new facilities or modifications required to address a new discharge at an existing facility) that have exceeded the specified times for approval or disapproval provided in 1 above.

Example: (#) of new applications and permit modifications for (type of permit[5]) have not been approved or disapproved within the —— days set as the maximum for this type of permit action.

Purpose: To provide a measure of the number of permits for new discharges that have not been processed within the defined time periods. This performance measure is just for new discharges. Backlogs of permit renewals are a tracking measure (see below), since there may be a need to prioritize the issuance of certain renewals (e.g. ecosystem based priorities) rather than renew a permit after it has expired but remains in effect. Trend analyses would allow the regulatory agency to readily determine whether they are improving or falling further behind. A backlog above the goal would trigger an evaluation to determine its cause and how to improve the Region's performance.

Results

1. Environmental Indicators

The success of permitting programs need to evaluated based on the

environmental conditions that exist in a particular area. Although permitted discharges are not the only source of pollutants, they are regulated to limit their impact so that environmental goals are achieved. Therefore, it is recommended that all permitting authorities develop specific environmental indicators that will be used to evaluate the overall success of their permitting programs.

The Agency is in the process of developing environmental indicators for the nation. Once the national indicators are determined each Regional office should work with the respective state and tribal governments to establish specific indicators for that jurisdiction. This is being accomplished through the development of Environmental Performance Agreements (EnPA) with states and tribes. EnPA's will include indicators that will be re-evaluated yearly and updated, revised or replaced as needed to accurately measure environmental progress. The first EnPA's will be for states and tribes volunteering in Fiscal Year 1996, with full implementation scheduled for FY97. A key component of the EnPA's is stakeholder participation, which includes the development of appropriate environmental indicators for each jurisdiction. The environmental indicators will be used to determine priorities for the next year, including permitting activities.

2. Level of Compliance

The compliance status of all permitted facilities is an important performance measure for permitting programs. In order for environmental protection to occur, facilities must be in compliance with their permits. Just issuing the permit doesn't ensure protection, therefore, it is necessary to determine the level of compliance with those permits to help identify where greater clarity of permit conditions is needed and where to provide technical assistance.

The initial PIT recommendations on how to measure the level of compliance did not contain sufficient detail to allow stakeholders to give their opinion on this approach. The comments received focused on the need for more detail to better define this performance measure. In addition, the Agency has compliance categories for the individual media programs. However, for the most part these have not been developed with stakeholder input. Therefore, it is recommended that a project team of EPA Headquarters and Regional offices and state and tribal agencies be established to further develop this measure as needed. The project team would work with stakeholder groups in the development of a proposal to measure the level of compliance of permitted entities and identify the causes of non-compliance. The Office of Enforcement and Compliance Assurance (OECA) should be responsible for establishing and leading the broad based project team.

Customer Service

1. Customer Satisfaction

Customer service surveys and standards have been drafted for three groups to which EPA provides service: citizens participating in the permitting process; permit applicants; and authorized state, tribal or local governments. The surveys have been approved by the Office of Management and Budget (OMB) and EPA plans to begin using the surveys in FY'96. The customer service standards will be discussed with stakeholder groups prior to finalization. EPA will prepare a report on the results of the customer service surveys in September 1996.

The Office of Policy Planning and Evaluation (OPPE) has been recommended to conduct the surveys and analyze the results. Each Regional permitting office would receive a report identifying any situations where the customer service standards were not met. In these cases, the Regional office could hold focus group meetings or other outreach activities with appropriate stakeholders to determine a course of action that is intended to improve customer service.

Generic Tracking Measures

Process

1. Time Required for Permit Issuance

Each Regional office that is issuing permits should determine the average time required from receipt of a permit application to the Region's final permit decision (this does not include the time to address any appeals). The range of time required to issue each type of permit should also be determined. This information should be made available in any fact sheets and permit application information distributed by the Regional office.

Example: The average time required to issue (type of permits) is ____ (days, weeks, months) with a range of ____ to ____ (days, weeks, months).

Purpose: To provide the applicant and public with an estimate of the total time required to process a given type of permit. This measure, coupled with the timeliness performance measure will show the amount of time the applicant spends working on the permit as well as EPA.

2. Permit Application Completeness

Each Regional office that is issuing permits should track the number of resubmittals (additional/revised information required for the permitting authority to be able to act on the application) required to obtain a complete application. This information should be presented as a percentage of the total universe of permit applications received.

Example: The percentage of (type of permits) applications requiring resubmittal prior to being complete is as follows:

____%—No resubmittals required
____%—One resubmittal required
____%—Two resubmittals required
____%—Three or more resubmittals required

Purpose: To have the Regional offices track and make public the number of resubmittals needed to obtain a complete permit application. Regional offices should work with their regulated community to identify causes of excessive resubmittals and determine corrective actions. Permitting programs with high percentages of applications requiring multiple resubmittals would indicate a problem somewhere in the permit process. This could include the information being requested, the clarity of the deficiency letter, the training provided to the regulated community, etc. Trend analysis could be used to determine if progress was being made to reduce the number of applications requiring resubmittal.

3. Cost of Permitting Program

Each Regional office that is issuing permits should estimate the total agency work hours required to process each type of permit they issue and the average number of work hours required to process each individual permit. This information would allow the EPA Region to sum the totals from each permit category to obtain the overall work hours expended on environmental permitting in that Region.

Example: The total work hours of processing all (type of permits) was (#) for ____ (calendar or fiscal year). The average work hours expended on each permit, based on the processing of (#) permits, is (#) for the same reporting period.

Purpose: To provide an estimate of the total work hours expended on environmental permitting programs. The average work hours information would be useful in determining if programs of similar complexity had significantly different averages. This information could also be used to compare the average processing times of

the Regional offices. Evaluations could then be conducted to determine the cause of the difference and learn from successful programs. Trend analysis could be used to determine if work hours are increasing or decreasing.

4. Number of Pending Renewal (Air/Water) and Interim Status (RCRA) Permits

Each Regional office that is issuing permits should track the number of permits that have expired but remain in effect and have not been renewed, or in the case of RCRA, the number of facilities that are operating under an interim status designation.

Example: (#) (type of permits) have not been renewed by the expiration date as of _____ (reporting period).

Purpose: To provide a measure of the number of permits that have not been renewed by their expiration date. Trend analyses would allow the Regional office to readily determine whether the number is increasing or decreasing. Additional analysis would be needed to determine if an increasing trend was a problem or the result of a decision by the Region to focus on ecosystems and allow permits in non-priority areas to remain in effect.

Results

1. Pollution Prevention/Innovative Technology

Each Regional office that is issuing permits should track the number and percent of their permits that include innovative technology or pollution prevention conditions that are included as a means, in whole or in part, to achieve compliance. These conditions could include actual pollution prevention activities or investigations into possible pollution prevention techniques that could assist the facility in complying with permit conditions. Discharge, emission and release limitations would not be considered pollution prevention conditions. The Regions would require the same information from delegated state, tribal and local agencies.

Example: (#) and (%) of (type of permit [5]) that includes pollution prevention conditions (this term requires definition) in the permit as a means, in whole or in part, to achieve compliance with permit conditions.

Example: (#) and (%) of (type of permits) that utilize innovative technology (this term requires definition) to achieve compliance with permit conditions.

[5] Type of Permit—Each permitting authority would individually define the permit universe that would be included within the performance or tracking measure.

Purpose: To determine the effectiveness of permitting programs in encouraging the use of pollution prevention and innovative technologies. If the percentage is below what a regulatory agency was hoping to achieve, additional analyses could be conducted to determine why pollution prevention approaches or innovative technologies were not being used to achieve permit compliance. This tracking measure should be reevaluated, within 1–2 years, to determine if it should be changed to a performance measure, with a specific goal as to the percentage of permits that should utilize pollution prevention techniques or innovative technologies to achieve compliance.

Pollution Prevention Incentives Task Force Recommendations

A. Background/Approach

The Pollution Prevention Incentives Task Force derived its mission from the recommendations of the National Performance Review (NPR). The NPR stated that EPA should encourage pollution prevention (P2) by providing flexibility, creating P2 incentives in permits and compliance approaches, and issuing guidance on how to implement innovative strategies and procedures. The NPR also recommended that EPA facilitate permitting of innovative technologies and identify what changes are necessary to achieve this.

EPA has a strong commitment to fostering pollution prevention because experience has shown that it is good for the environment and the economy alike. To implement P2 on a larger scale calls for flexible thinking, concrete and ambitious goal-setting, strong commitment at all levels of government and industry, and an innovative effort that only business can supply. The P2 Incentives Task Force explored these dynamics to help EPA improve the permitting system to encourage investment in P2 measures.

The Pollution Prevention Act of 1990 establishes a hierarchy for environmental protection (source reduction, reuse, recycle, treat, store and dispose) with P2 as the preferred approach. As the hierarchy acknowledges, P2 approaches are not attainable in all instances. In the discussion that follows, many of the recommendations are relevant to P2, recycling, or other innovative approaches.

Streamlined permitting may have an important role in fostering P2. The PIT is focusing on eliminating factors of the permitting system that are overly rigid, cumbersome, and time-consuming. These changes can free up additional resources for potential investments in P2. Yet, streamlined permitting might not mean more pollution prevention unless we also allow greater flexibility, and design incentives to encourage P2-based activity.

This Task Force is emphasizing *incentives* for P2 because, as a general rule, it is in industry's interest to prevent pollution. Our goal is to create permitting incentives and eliminate barriers for industry to do what is largely in their own best interest.

The following Task Force recommendations present approaches for forging the necessary connection between more efficient permitting and real progress in preventing pollution.

B. Task Force Recommendations

1. Link Performance-Based Permitting With Facility-Based Permitting, Consolidation of Permitting Requirements, and Cross-Media Permitting

The Task Force recommends that EPA and state, tribal and local permitting authorities use performance-based permitting as a means of achieving greater flexibility. By performance-based permitting, the Task Force means permitting which recognizes that a standard containing a numeric level does not automatically dictate which technology facilities are to use. On the rule development side, this means writing standards that set numeric levels where possible and appropriate. Many EPA technology-based rules have in fact been written that way. This is because ''technology-based'' is short-hand for a rule that sets a standard at the numeric level at which the referenced-technology performs. The reference technology is determined by the type of standard being set, such as best demonstrated available technology.

What is key is how ''technology-based'' rules are interpreted by permit writers. Often, they interpret the rules as requiring the use of the referenced technology. To avoid this, EPA rulemakings should explicitly acknowledge that permit writers are authorized to evaluate technologies other than the referenced technology. Flexibility is needed to allow facilities to use innovative approaches that prevent pollution and achieve greater emission reductions across media. Flexibility would not be allowed to compromise environmental protection, since the permit writer would still have to be satisfied that the permit applicant could meet the performance standard in question.

It is key to recognize that permit writers are generally burdened with heavy case loads, and that it substantially increases their burden if they must regularly evaluate alternative technologies to determine whether they perform at a level equivalent to that of the standard's reference technology. Making it easier for permit writers to evaluate alternative technologies is a task that EPA and state, tribal and local permitting authorities need to address systemically. Hopefully, some of the specific steps provided at the end of this section will meet this need.

The steps in this recommendation should provide the following advantages: (1) making it easier for facilities to use innovative technologies (often key for P2); (2) giving facilities more latitude to explore P2 approaches; and (3) giving facilities a greater economic incentive to explore P2 approaches. Looking at a facility as a whole, rather than a collection of individual pipes each of which needs to meet an individual emission level, can often provide significantly greater opportunities for preventing pollution and making wise investments that yield long-term savings.

The Task Force recommends that EPA, state, tribal and local permitting authorities take steps to link performance-based permitting with facility-based permitting, consolidation of permitting requirements by industry sector, and cross-media permitting. These recommendations build on the Administrative Streamlining Task Force's recommendation for flexible permitting. It is important to note that the focus here is on facility-based permitting, and not company-based, which is a different issue.

These steps are also in line with the alternatives being explored in a host of new EPA initiatives, including several priority projects of the Administration's program to reinvent environmental regulation. Project XL, and alternative strategies for industry sectors, communities, and federal agencies, can address a combination of facility-based permitting and cross-media permitting issues; consolidating federal air rules for the chemical industry will be a test case for consolidation. Demonstration projects in multi-media permitting, as led by the Pollution Prevention Policy Staff are expected to produce several multi-media P2-oriented permits in the next year. The Environmental Technology Initiative's (ETI's) Innovative Technology Permitting Program, being implemented by the Office of Policy, Planning and Evaluation, is currently advancing over two dozen projects designed to eliminate barriers to technology innovation in the permitting process. In addition, ETI's Environmental Technology Verification Program, being implemented by the Office of Research and Development, will soon begin providing credible performance information on more cost effective innovative technologies.

Based on the foregoing, the Task Force recommends the following:

a. The concepts of this first recommendation should be incorporated into CSI, Project XL, ETI, and multi-media permitting. PIT members should work with these initiatives to help achieve the implementation of these concepts.

b. As Regional offices disinvest from oversight of state permit programs, they should collaborate with state, tribal, and local permitting authorities in assessing relevant P2 techniques, where appropriate.

c. To the extent possible, subsequent EPA rulemakings should explicitly acknowledge that permit writers are authorized to exercise their judgment in establishing performance-based limitations based on the technology referenced in the development of the regulatory standard. For example, in the NPDES program, the permitting authority does not approve technologies. The permit writer prepares a permit which includes limitations and conditions, and it is up to the facility to determine how they will meet the permit limits.

d. Examine what steps would be necessary to move towards institutionalizing some of the approaches described above in core EPA programs. This should be undertaken by a PIT workgroup.

e. State permitting authorities should use the results of the Environmental Technology Verification Program or similar state programs to reduce the need for testing and indepth engineering review during permitting.

2. Create Industry-Sector Inventories of Regulatory Thresholds for Permitting

The Task Force recommends developing a public inventory of existing federal regulatory thresholds for permitting requirements on an industry-by-industry basis. Specifying the thresholds would help facilities to assess the costs and benefits of going below the thresholds and opting out of the permitting system. The Task Force believes that in most instances the savings achievable by getting out of the permitting system would more than offset the investments needed to get releases below thresholds.

Data in this inventory could serve as a reference point for discussions between communities and local facilities about financial incentives for using pollution prevention approaches. Mutual discussions could more easily be tied to the financial incentives for a facility to reduce releases to a level where permitting is reduced or unnecessary, and outcomes that could represent cost savings to the facility.

The Office of Pollution Prevention and Toxics (OPPT) in EPA is piloting this approach for the metal finishing industry, which is comprised mainly of small to medium-sized businesses. Since industry faces federal and state regulations, OPPT will try to include key state regulatory requirements, too. If it appears that some opportunities for getting below certain thresholds bear more promise than others, EPA would emphasize those opportunities most likely to result in success.

EPA recognizes that some explanation about possible permit variances or exemptions will be needed in an industry-sector inventory. In some instances, for example, emissions trading is allowed, and a facility may have legitimately purchased an emissions trading credit. EPA will need to provide sufficient explanation so that users of the inventory will find its data relevant and meaningful to their own applications.

To be clear, the scope of an inventory will be limited to linking permitting thresholds with the economic incentives for getting below thresholds. It will not provide facility-specific information or health/environmental effects data.

The Task Force's specific recommendations are:

a. OPPT should develop a pilot inventory for an industry sector, such as metal finishing (this effort has already started).

b. OECA is developing additional sector notebooks and is exploring the possibility of expanding the existing 18 notebooks to include information to assist in determining compliance costs. OECA, with support from the Program offices, should continue to explore the type and extent of compliance cost information that can and should be included in the sector notebooks.

3. Explore Offering Alternative Emissions Tracking in Exchange for Using P2 Practices

The Task Force recommends that EPA explore whether an alternative emissions tracking approach could be offered in exchange for a facility commitment to use P2 practices to achieve compliance in whole or in part. Federal permitting requirements

generally require facilities to monitor releases (using EPA-approved methodology) and report this data to regulatory agencies. An alternative approach would be to allow a facility to use third-party auditors to convert its proprietary process control measurements into release data that would be reported to EPA as public data.

A primary reason EPA is interested in this approach is that using process data encourages facilities to find opportunities for pollution prevention. Second, it may provide communities with significantly more reliable data on facility emissions in their communities. Third, there may be a significant economic incentive for industry to avoid the cost of expensive monitoring equipment.

The recommended approach is basically an equivalent alternative to current monitoring requirements. (Reducing monitoring requirements is beyond the scope of this particular recommendation.) The Task Force acknowledges that EPA would need to verify P2 commitments made in exchange for using this alternative.

EPA recognizes that there are some concerns about whether the public would have confidence in this recommended approach. One concern is that industry consultants might lack credibility with local communities. The key difference in what the Task Force is proposing is that industry would not pay a third-party auditor directly. The apt analogy is the third-party auditor system used in this country for accrediting laboratories. Labs pay a non-profit organization for the services of the third-party auditors. The auditor's sponsoring organization (the non-profit) has an overriding interest in maintaining the integrity and independence of their auditors, because a biased auditor reflects badly on the organization and the entire accreditation system.

Third-party auditors would have to be trained and accredited by an accrediting organization. Among other things, they would probably need to be trained in knowing what kind of data to get from facilities, and learning the calculations to perform to convert facility process data into reportable emissions data. Given the great diversity of American industry, this may be an idea that could be piloted on an industry-sector basis.

The Task Force recommends the following specific steps:

a. A PIT workgroup should consult with the project team for piloting third-party audits for industry compliance (one of the President's 25 initiatives for reinventing environmental regulation) to further investigate the viability of this approach.

b. This PIT workgroup should also explore potential overlap with International Organization for Standardization (ISO) 14000 efforts.

4. Share P2 Data With Permit Applicants and Affected Communities, and Give Basic P2 Training to Permit Writers

The Task Force recommends that EPA and state, tribal and local permitting authorities share P2 data with permit applicants and affected communities, and give basic P2 training to permit writers. Both of these ideas would provide a way for P2 to be emphasized up-front in the permitting process.

Most permit writers are at the state, tribal, and local level and face workloads that are generally perceived as heavy. To date, their experience with P2 has ranged from no involvement to personal commitment to P2, with lack of time and knowledge often being cited as barriers to their promoting P2.

Despite this perception about the difficulty permit writers face in promoting P2, a recent survey of permit writers in northeastern states conducted by the Northeast Waste Management Officials' Association (NEWMOA) indicates the vast majority of those surveyed wanted P2 training. They said they wanted training in when, how, and where they can use P2 directly in their jobs, and under what authority they can act. NEWMOA is piloting a P2 training for permit writers, based on a review of many permits where P2 has already been incorporated. Efforts such as NEWMOA's could serve as a model for training in other parts of the country, and could be tailored according to the permitting authority and regional needs.

At a minimum, permit writers could serve as a reference for facilities on where to turn (such as local technical assistance centers) for P2 information. It is key that they have a baseline of information about P2 concepts and appreciate the value of sharing P2 data with facilities. Training could most effectively be offered at the state and EPA regional level. EPA, in consultation with states, tribes and local permitting authorities, should evaluate whether P2 reference materials need to be developed and sent to permit applicants and made available to the public.

The Task Force recommends that pollution prevention be made part of the core training for permit writers being advocated by the PIT Training Task Force. Stakeholders have suggested that P2 training should also be given to enforcement and regulatory personnel.

5. Develop Permit Conditions To Accommodate the Possibility That Innovative/P2 Technologies May Not Perform as Expected or May Take Longer To Achieve Compliance

The PIT recommends that permit writers across all media programs be encouraged to work with the regulated community to incorporate innovative/P2 technologies within the terms and conditions of the permit. The PIT recognizes that innovation may result in a longer compliance schedule as compared with traditional permit options. However, carefully constructed compliance schedules could assist members of the regulated community to accurately assess their compliance obligations. The permit could also include a fall-back position, specifying future actions, if the innovative/P2 technology does not meet permit limits. As the terms of the permit are those which are legally enforceable, and given the permit-as-a-shield doctrine, the notion of enforcement as a barrier to innovative/P2 technologies should be alleviated.

6. In All General Permits and Permits-by-Rule, Include Language That Explains the Preference for Using P2 Approaches and the Potential Economic Benefits of P2

The Task Force recommends that EPA and state, tribal and local permitting authorities incorporate language in all general permits and permits-by-rule that explains the environmental management hierarchy (source reduction, reuse, recycle, treat, store and dispose), the preference for using P2 to achieve compliance, and the potential economic benefits associated with P2. If there are differences between EPA's and a state, tribal or local permitting authorities' hierarchy, the permitting authority could list both.

Individual permits are not included in this recommendation because it is recognized that, in these cases, major opportunities for P2 can be identified while the permit conditions are being developed—before permit issuance. Therefore, for individual permits, it would be better to put this type of language up-front in the process, such as in permit call-in letters or model permit applications used in the RCRA program. Also, implementing recommendation 4 would encourage including P2 up-front in the process of preparing individual permits.

It is recommended that a PIT workgroup develop sample language and make it available for distribution through core training sessions for permit writers. The workgroup should include

permit writers from the Regions and state, tribal and local permitting agencies.

Training Task Force

Recommendations

Background

The National Performance Review Team for Permit Streamlining identified training for permit professionals as a priority. Their specific recommendation included the following suggestions: establish an EPA Permits Institute, require State/Federal permit professionals to complete core curriculum, review permit organizational staffing for appropriate skills mix and provide financial/other incentives and awards to permit professionals. In addition to these specific proposals, training was also highlighted under the category of ''Increasing Access to Permitting Information.'' Suggestions under this category discussed training for the public and applicants. Specific recommendations included: draft clear, understandable guidance manuals for states, tribes, local authorities, applicants and the general public; and hold periodic training workshops in conjunction with state associations, trade associations and citizens' groups. The PITs Training Task Force chose to address training broadly to include the regulated community, public and permit professionals.

Overview

Effective environmental permitting relies upon effective transmittal and use of information by all interested parties. State, tribal, local and EPA permit writers need information of the specific characteristics of the facilities being permitted, and need knowledge of the applicable statutes and regulations. The regulated community also needs information, in particular of the permitting process and how regulators use their information. Citizens and environmental groups also need to know the permitting process in order to effectively participate in the permitting process.

The lack of information leads to several problems. Delays in completing permits occur if permittees and citizens do not understand the permitting process and use the appeals process to delay issuance until they are satisfied they fully understand all provisions of the permit, including how each provision was developed. Inconsistencies between permits, that should be similar, occur if permit writers do not understand the basis and reason of the underlying regulations or do not know of applicable guidance.

Recommendations

In order to provide the necessary information to EPA, state, tribal and local permit writers, the regulated community, and citizens and environmental groups, the Task Force recommends four actions.

1. Provide information to the regulated community and others. The Task Force recommends that EPA national Program offices use a series of informational tools to educate permittees and citizens about the permit process. Specific tools to be used or developed are:

a. Using the Internet, trade associations and small business development centers to announce training opportunities and distribute training materials. The announcement should include an explanation of the contents of the training. Program offices should also coordinate to standardize and post these announcements and develop and implement a program to educate the public on the permitting process using tools such as: press releases, infomercials, radio/TV announcements and commercials.

b. Development of a generic fact sheet which summarizes a new permitting project in plain English and may be used as a tool to explain to interested parties the permitting action. The Program offices should coordinate in the development of these fact sheets to achieve as much consistency in format and information provided as possible. After the generic fact sheet is developed, all permitting authorities should prepare a fact sheet, following the model, as part of the permitting process.

c. Develop a clearinghouse of existing model permitting applications and instructions (this should be accomplished in cooperation with state, tribal, and local associations). In addition, the Program offices should request the permitting authorities, especially if EPA, to use ''plain English'' instructions with application forms and to include a single point of contact (see Administrative Streamlining Task Force report).

2. Provide information on every new significant[6] *rule.* The Task Force recommends the development and use of a series of informational tools to educate Regional, state, tribal, and local permitting authorities, permittees, and citizens about the requirements and reasons for new rules. Specific actions are:

a. Program offices should prepare, as part of regulatory development for significant rules, a package of information which explains the new requirements, including information about permitting and any implementing guidance. The information package should contain materials targeted to different audiences, the regulated community, the permitting authorities and the public and provide contacts for additional information. This package of information must be available at the time of promulgation (e.g., via Internet). Include in the Federal Register information about the availability of this material.

b. A PIT workgroup (including representatives from program offices) should develop a standardized fact sheet format to be used with each new significant rule. Once developed, the Program offices should use this format for transmitting information about each new significant rule either electronically (e.g., Internet) and/or via mailing lists.

3. Define and provide training on core skills and knowledge needed to issue permits. The Task Force has developed the core skills and knowledge that are recommended for permit writers to be effective in their jobs. The Task Force recommends that the Administrator endorse a training program for permit writers, including the core curriculum for permit writers (listed below). This will require the commitment of resources to develop the training and travel funds to attend the training. A PIT workgroup (comprised of representatives from each Program office) should take the lead in designing the training program. States, tribes, and local permitting authorities should participate on the workgroup. Each Program office also needs to identify the additional media specific knowledge which would be necessary for that program. All training should be made available to interested parties, both internal and external to EPA. Examples of these core skills and knowledge include:

- the need and purpose of permits,
- factors that comprise an enforceable permit,
- applicable parts of the environmental statutes,
- when a permit application is complete,
- pollution prevention and innovative technology,
- waste management hierarchy,
- development of permit conditions,
- public speaking and communicating with different audiences,

[6] A significant permitting rule should be determined by considering its environmental impacts, community concerns, and/or complexity of the regulated facilities.

- technical writing,
- sensitivity (understanding needs of stakeholders),
- environmental justice,
- holistic view of permitting—multi-media/coordination of permits, and
- training on the new permitting approach (if adopted).

4. Store and provide critical knowledge. The Task Force has identified a series of tools to better provide written guidance and accumulated permitting office experience to Regions, states, tribes, local authorities, permittees, and citizens. The Task Force recommends that the national Program offices develop these tools and make them available as needed. These tools are:

a. Provide electronically (Internet) an index and synopsis of guidance documents. For Example, the Office of Solid Waste has the RCRA Permit Policy Compendium which contains guidance on important RCRA permit policies and procedures. It is updated annually and is available electronically through the Internet.

b. Creation of EPA subject-based work groups, for example to coordinate issuance of combustion permits between the Air, RCRA and TSCA programs. To assist in the development of the subject based work groups, the Regions should establish regional multi-media permit coordination work groups. These specific work groups should focus on implementing more organized permit ''quality control'' (e.g., collecting, storing and disseminating EPA, state, tribal, local agencies, and permit writers appeal issues (major and minor) and/or other issues that have an impact on the effectiveness and enforceability of permits). CSI is exploring this and other options to streamline and improve environmental permitting.

c. Establishing quasi-independent permit review teams to assure the issuance of quality permits. The review teams may consist of representatives from the above-mentioned, subject-based work groups. The review teams would evaluate significant permitting actions [7] to assure all aspects of the permitting process were addressed (environmental justice, pollution prevention, public notice/hearing, and understandable compliance terms). In FY–96, the permit review team and a state volunteer should conduct a pilot to assess the effectiveness of the permit review team.

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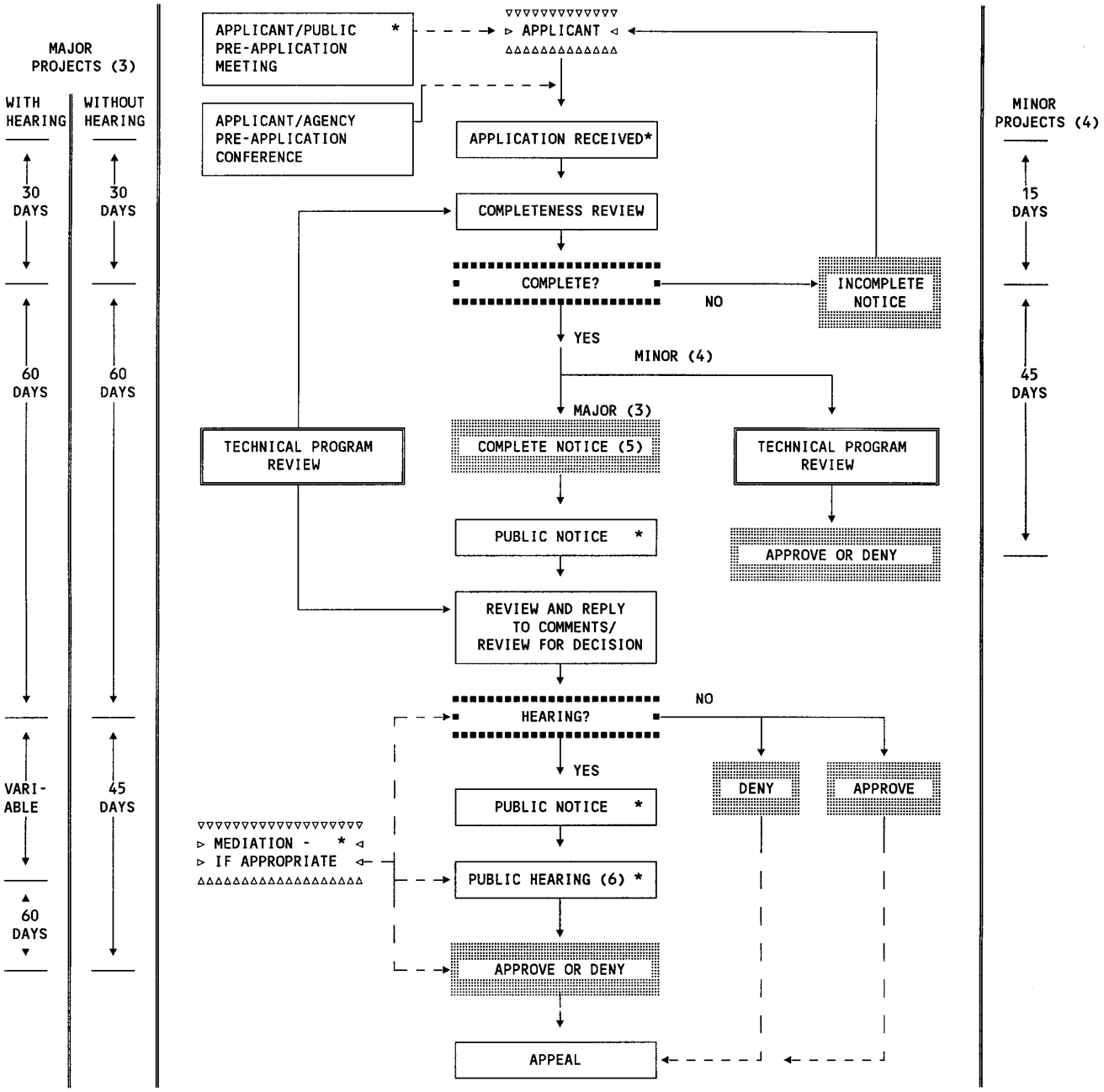
[7] A significant permitting action should be determined by considering the environmental impacts, community concerns, and/or complexity of the facility being permitted.

ATTACHMENT 2: AUTHORIZED & DELEGATED PERMIT PROGRAMS PROPOSED UNIFORM PERMITTING PROCESS (1,2)



NOTES

* Opportunities or requirement for public participation.
(1) Time frames can be waived with mutual consent, or if applicant is unresponsive.
(2) Procedure to apply to all programs except siting.
(3) Major projects receive full public participation opportunity. They are the projects most likely to have significant environmental impact.
(4) Minor projects receive internal review only. They represent minimal or no environmental threat.
(5) "Complete" notice can be published when application is determined to be complete, or when draft permit has been agreed on, or at both milestones.
(6) Public hearings may be evidentiary or administrative, at states' option.

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federal register

Wednesday
August 7, 1996

Part VII

Department of Housing and Urban Development

24 CFR Parts 111 and 115

Regulatory Reinvention; Certification and Funding of State and Local Fair Housing Enforcement Agencies; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 111 and 115

[Docket No. FR–3322–F–02]

RIN 2529–AA60

Office of the Assistant Secretary for Fair Housing and Equal Opportunity; Regulatory Reinvention; Certification and Funding of State and Local Fair Housing Enforcement Agencies

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: On February 28, 1996 (61 FR 7674), HUD published for public comment an interim rule streamlining its regulations governing the certification and funding of State and local fair housing enforcement agencies. Previously, the requirements for substantially equivalent certification and participation in the Fair Housing Assistance Program had been set forth in different parts of title 24. The February 28, 1996 interim rule consolidated these regulations, thus providing all necessary requirements in a single part and eliminating redundancy from title 24. This rule finalizes the policies and procedures set forth in the February 28, 1996 interim rule and takes into consideration the public comments received on the interim rule. Further, this rule removes from title 24 the unnecessarily codified preamble to the final rule implementing the Fair Housing Amendments Act of 1988.

EFFECTIVE DATE: September 6, 1996.

FOR FURTHER INFORMATION CONTACT: Marcella Brown, Director, Fair Housing Assistance Program Division, Office of Fair Housing and Equal Opportunity, Room 5216, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0455. (This is not a toll-free number.) Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. The February 28, 1996 Interim Rule

The Fair Housing Act (42 U.S.C. 3601–3619) (the Act) provides that whenever a complaint alleges a discriminatory housing practice, arising in the jurisdiction of a State or local agency which has been certified by the Secretary under section 810(f) of the Act, HUD shall refer the complaint to that State or local agency. HUD has implemented section 810(f) at 24 CFR part 115, which establishes the criteria the Secretary will utilize to certify State and local fair housing enforcement agencies.

Section 817 of the Act provides that the Secretary may reimburse State and local fair housing enforcement agencies which assist the Secretary in enforcing the Act. HUD has implemented section 817 at 24 CFR part 111, which sets forth the requirements for participation in the Fair Housing Assistance Program (FHAP). Through the FHAP, HUD provides assistance to certified State and local fair housing enforcement agencies. This assistance is designed to provide support for complaint processing, training, technical assistance, data and information systems, and other fair housing projects.

On February 28, 1996 (61 FR 7674), HUD published for public comment an interim rule streamlining its regulations governing the certification and funding of State and local fair housing enforcement agencies. Specifically, the rule consolidated parts 111 and 115. This consolidation permitted HUD to provide all necessary requirements for ''substantially equivalent'' certification and FHAP participation in a single part. The February 28, 1996 interim rule described in detail the amendments made to 24 CFR parts 111 and 115.

II. This Final Rule

This rule finalizes the policies and procedures set forth in the February 28, 1996 interim rule and takes into consideration the public comments submitted on the interim rule. The public comment period on the interim rule expired on April 29, 1996. Two comments were received.

This final rule makes three changes to the interim rule in response to public comment. First, the final rule establishes a 180-day limit on suspensions based on changes in the law. Further, this final rule references the non-regulatory procedures which require that HUD provide an agency with notice and an opportunity to respond before suspension. The rule also clarifies the definition of ''covered multifamily dwellings'' set forth in the February 28, 1996 interim rule. Section III. of this preamble presents a summary of the significant issues raised by the public commenters on the February 28, 1996 interim rule, and HUD's responses to these comments.

In addition to the revisions made in response to public comment, HUD determined it was necessary to make several other changes to the interim rule. First, this final rule clarifies that an enforcement agency may not receive Special Enforcement Effort (SEE) funds if it is currently on a Performance Improvement Plan (PIP), or if it has been suspended during the fiscal year in which SEE funds are sought. This rule also clarifies that HUD may partially reimburse reinstated agencies for cases processed during the suspension period. Further, the final rule makes two amendments which will benefit enforcement agencies by providing HUD with greater flexibility. Section IV. of the preamble details these changes to the February 28, 1996 interim rule.

Additionally, this rule removes the unnecessarily codified preamble to the January 23, 1989 final rule (54 FR 3232) implementing the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601 *et seq.*). This preamble is codified in title 24 as appendix I to subchapter A of chapter I. The preamble, although it provides helpful information to readers, is readily available through other means and does not merit inclusion in the CFR. The removal of this codified preamble will assist in HUD's efforts to streamline the contents of title 24.

III. Discussion of the Public Comments on the February 28, 1996 Interim Rule

A. The Suspension and Withdrawal of Certification Provisions Should be Revised

Comment. Section 115.211 provided that HUD would suspend an enforcement agency's certification if HUD had reason to believe that: (1) A change in law, regulation, or procedure had limited the effectiveness of the agency to enforce its fair housing law or ordinance; or (2) the enforcement agency's performance did not comply with 24 CFR part 115. If HUD's subsequent review demonstrated that the agency no longer complied with the requirements of part 115, HUD would withdraw the agency's certification. Section 115.212 set forth the procedures governing withdrawal of certification.

One of the commenters was strongly opposed to §§ 115.211 and 115.212. The commenter believed the conditions triggering suspension were vague and might lead to arbitrary suspensions. Further, the commenter suggested that § 115.211 be revised to require that HUD provide an agency with notice and an opportunity to respond before suspension. This commenter also recommended that HUD establish a time limit on suspensions based on changes in the law. The commenter noted that the interim rule imposed a 180-day limit on suspensions based on the agency's

performance. This commenter believed that HUD's administrative burden would increase due to its inability to refer complaints during the suspension period.

The commenter also questioned the adequacy of the reimbursement provisions at § 115.211. These provisions allowed HUD to reimburse formerly suspended agencies for cases processed during the suspension period. The commenter wrote that agencies should also be reimbursed for lost special grant funding and the costs of halted investigations.

HUD Response. HUD disagrees with several of the assertions made by the commenter. For example, the interim rule was sufficiently clear regarding the conditions which might lead to an agency's suspension. Further, the suspension provisions will not necessarily increase HUD's administrative burden. HUD also notes that agencies presently have a right to notice and an opportunity to respond prior to suspension. These rights are outlined in non-regulatory HUD guidance, which is currently being revised and updated. However, HUD agrees that this guidance should be referenced in 24 CFR part 115 and has revised the interim rule accordingly. HUD has adopted another of the commenter's suggestions by limiting suspensions based on changes in the law to 180 days.

The commenter's recommendations solely concerned the suspension and withdrawal of certification procedures at §§ 115.211 and 115.212. However, HUD has also revised § 115.208, which governs interim certification, to reference the non-regulatory guidance and to establish the 180-day limit. HUD believes the issues raised by the commenter are equally applicable to agencies with interim certification. Further, these revisions are necessary to create uniformity in the procedures for interim certification and certification.

B. Definition of ''Covered Multifamily Dwellings'' Was Confusing

Comment. Paragraph (a)(5)(i) of § 115.201 provided that ''the term 'covered multifamily dwellings' means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.'' One of the commenters complained about the awkward phrasing of this provision. As this commenter noted, the correct interpretation of the word ''and'' is unclear. The commenter correctly assumed that ''and'' was intended to be the conjunctive for the two independent meanings of ''covered multifamily dwellings.'' However, the word ''and'' could easily be misinterpreted to be the conjunctive for the phrase ''if such buildings.'' The commenter suggested that HUD clarify the wording of this definition.

HUD Response. HUD agrees with the commenter. Section 804(f)(7) of the Act provides a clear definition of the term ''covered multifamily dwellings.'' Paragraph (a)(5) of § 115.202 required that the agency's fair housing law or ordinance ''[p]rovide the same protections as those afforded by section 804 * * * of the Act.'' This reference to section 804 encompassed the statutory definition of ''covered multifamily dwellings.'' It is, therefore, unnecessary for the final rule to set forth a separate definition. Accordingly, this final rule simply removes 24 CFR 115.202(a)(5)(ii).

This final rule also removes § 115.202(a)(5)(iii). The language of this provision was also already encompassed in section 804 of the Act. Specifically, the provision repeated the language of section 804(f)(4), which concerns the American National Standard for facilities providing accessibility to persons with disabilities.

IV. Additional Changes to the February 28, 1996 Interim Rule

A. Limitation on SEE Fund Eligibility

Section 115.305 set forth the eligibility requirements for Special Enforcement Efforts (SEE) funds. SEE funds are awarded to enforcement agencies with proven experience and capability in administering their fair housing laws and ordinances. Accordingly, paragraphs (a)(1) through (a)(6) of § 115.305 established fairly strict eligibility criteria. For example, 24 CFR 115.305(a)(3) required that:

> (3) At least ten percent of the agency's fair housing caseload resulted in written conciliation agreements providing monetary relief for the complainant as well as remedial action, monitoring, reporting and public interest relief provisions[.]

Another example was provided by the criterion set forth in paragraph (a)(5) of § 115.305:

> (5) The agency's administration of its fair housing law or ordinance received meritorious mention for its complaint processing or other fair housing activities that were innovative[.]

As the above examples illustrate, HUD intends to limit SEE funding to those agencies which meet a high threshold of eligibility. Accordingly, agencies which are experiencing difficulties in administering their fair housing laws and ordinances are ineligible for SEE funding. However, in order to prevent any possible confusion, this final rule amends § 115.305 to clarify that an enforcement agency may not receive SEE funds if it is currently on a Performance Improvement Plan (PIP), or if its interim certification or certification has been suspended during the fiscal year in which SEE funds are being sought. HUD wishes to note that agencies ineligible for SEE funding may still, if otherwise eligible, apply for Complaint Processing funds, and Administrative Cost funds.

B. Partial Reimbursement of Reinstated Agencies

As discussed in section III.A. of this preamble, the February 28, 1996 interim rule provided that HUD would reimburse an agency for cases processed during the agency's suspension period. HUD may be unable to fully reimburse reinstated agencies for these costs. Accordingly, this final rule clarifies that HUD will provide full or partial reimbursement for cases processed during the period of suspension.

C. Increased HUD Flexibility

This final rule also makes two amendments, designed to benefit enforcement agencies, by providing HUD with greater flexibility. The February 28, 1996 interim rule mandated that HUD suspend an agency if the conditions set forth in §§ 115.208 or 115.211 were satisfied. HUD may, in certain circumstances, wish to postpone the suspension of such an agency. The interim rule denied this ability to HUD. This final rule provides HUD with the required flexibility by revising §§ 115.208 and 115.211 to state that HUD ''may'' suspend an agency if the suspension conditions are triggered.

The interim rule prohibited the reimbursement of an agency who was suspended due to its performance until HUD determined that the agency complied with the performance standards in § 115.203. However, in certain cases speedier reimbursement of such agencies may be justified. This final rule permits HUD to reimburse agencies prior to a determination that the requirements of § 115.203 are satisfied.

V. Other Matters

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. Findings of No

Significant Impact with respect to the environment were made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing Sections 810(f) and 817 of the Act. Those Findings remain applicable to this rule, and are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official, under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule merely consolidates in a single part the requirements for ''substantially equivalent'' certification and participation in the FHAP. It effects no changes in the current relationships between the Federal government, the States and their political subdivisions in connection with HUD programs.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this final rule will not have a potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. This final rule only affects State and local fair housing enforcement agencies which seek certification under section 810(f) of the Act and participation in the FHAP. No significant change in existing HUD policies or programs will result from promulgation of this final rule, as those policies and programs relate to family concerns.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule finalizes the policies and procedures set forth in the February 28, 1996 interim rule. Specifically, it consolidates the requirements of 24 CFR parts 111 and 115, which govern the certification and funding of State and local fair housing enforcement agencies. This consolidation will assist enforcement agencies by providing all the necessary requirements for certification and FHAP participation in a single part. This final rule does not affect or establish substantive policy, and will not have any economic impact on small entities.

List of Subjects 24 CFR Part 115

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Intergovernmental relations, Mortgages, Reporting and recordkeeping requirements.

Accordingly, the interim rule published on February 28, 1996 at 61 FR 7674, removing part 111 and revising part 115 of title 24 of the Code of Federal regulations is confirmed as final with the following change:

Part 115 is revised to read as follows:

PART 115—CERTIFICATION AND FUNDING OF STATE AND LOCAL FAIR HOUSING ENFORCEMENT AGENCIES

Subpart A—General

Sec.
115.100 Definitions.
115.101 Program administration.
115.102 Public notices.

Subpart B—Certification of Substantially Equivalent Agencies

115.200 Purpose.
115.201 Basis of determination.
115.202 Criteria for adequacy of law.
115.203 Performance standards.
115.204 Consequences of certification.
115.205 Technical assistance.
115.206 Request for certification.
115.207 Procedure for interim certification.
115.208 Suspension of interim certification.
115.209 Denial of interim certification.
115.210 Procedure for certification.
115.211 Suspension of certification.
115.212 Withdrawal of certification.

Subpart C—Fair Housing Assistance Program (FHAP)

115.300 Purpose.
115.301 Agency eligibility criteria.
115.302 Capacity building funds.
115.303 Eligible activities for capacity building funds.
115.304 Agencies eligible for contributions funds.
115.305 Special enforcement effort (SEE) funds.
115.306 Training funds.
115.307 Additional requirements for participation in the FHAP.
115.308 Standards for FHAP program review.
115.309 Reporting and recordkeeping requirements.
115.310 Subcontracting under the FHAP.
115.311 Corrective and remedial action.

Authority: 42 U.S.C. 3601–19; 42 U.S.C. 3535(d)

Subpart A—General

§ 115.100 Definitions.

(a) The terms ''*Fair Housing Act*'' and ''*HUD*'', as used in this part, are defined in 24 CFR 5.100.

(b) The terms ''*Aggrieved person*'', ''*Complainant*'', ''*Conciliation*'', ''*Conciliation agreement*'', ''*Discriminatory housing practice*'', ''*Dwelling*'', ''*Handicap*'', ''*Person*'', ''*Respondent*'', ''*Secretary*'', and ''*State*'', as used in this part, are set forth in section 802 of the Fair Housing Act (42 U.S.C. 3600–3620).

(c) *Other definitions*. The following definitions also apply to this part:

Act means the Fair Housing Act, as defined in 24 CFR 5.100.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Certified Agency is an agency to which the Assistant Secretary for Fair Housing and Equal Opportunity has granted interim certification or certification, in accordance with the requirements of this part.

Cooperative Agreement is the assistance instrument HUD will use to provide funds. The Cooperative Agreement will contain attachments and appendices establishing requirements relating to the operation or performance of the agency.

Cooperative Agreement Officer (CAO) is the administrator of the funds awarded pursuant to this part and is the Director of a Fair Housing Enforcement Center in the Office of Fair Housing and Equal Opportunity.

Director of FHEO means a Director of a Fair Housing Enforcement Center.

Dual-Filed Complaint means a housing discrimination complaint which has been filed with both the Fair Housing Enforcement Center and the certified agency.

FHAP means the Fair Housing Assistance Program.

FHEO means the Office of Fair Housing and Equal Opportunity.

§ 115.101 Program administration.

(a) *Authority and responsibility*. The Secretary has delegated the authority and responsibility for administering this part to the Assistant Secretary.

(b) *Delegation of Authority*. The Assistant Secretary delegates the authority and responsibility for administering this part to each Director of a Fair Housing Enforcement Center. However, with respect to the duties and responsibilities for administering subpart B of this part, the Assistant

Secretary retains the right to make final decisions concerning the granting and maintenance of substantial equivalency certification and interim certification.

§ 115.102 Public notices.

(a) Periodically, the Assistant Secretary will publish the following public notices in the Federal Register:

(1) A list of all agencies which have interim certification or certification; and

(2) A list of agencies to which a notice of denial of interim certification has been issued or for which withdrawal of certification is being proposed.

(b) The Assistant Secretary will publish in the Federal Register a notice soliciting public comment before granting certification to a State or local agency. The notice will invite the public to comment on the relevant State and local laws, as well as on the performance of the agency in enforcing its law. All comments will be considered before a final decision on certification is made.

Subpart B—Certification of Substantially Equivalent Agencies

§ 115.200 Purpose.

This subpart implements section 810(f) of the Fair Housing Act. The purpose of this subpart is to set forth:

(a) The basis for agency interim certification and certification;

(b) The procedure by which a determination to certify is made by the Assistant Secretary;

(c) The basis and procedures for denial of interim certification;

(d) The basis and procedures for withdrawal of certification;

(e) The consequences of certification;

(f) The basis and procedures for suspension of interim certification or certification; and

(g) The funding criteria for interim certified and certified agencies.

§ 115.201 Basis of determination.

A determination to certify an agency as substantially equivalent involves a two-phase procedure. The determination requires examination and an affirmative conclusion by the Assistant Secretary on two separate inquiries:

(a) Whether the law, administered by the agency, on its face, satisfies the criteria set forth in section 810(f)(3)(A) of the Act; and

(b) Whether the current practices and past performance of the agency demonstrate that, in operation, the law in fact provides rights and remedies which are substantially equivalent to those provided in the Act.

§ 115.202 Criteria for adequacy of law.

(a) In order for a determination to be made that a State or local fair housing agency administers a law which, on its face, provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the law or ordinance must:

(1) Provide for an administrative enforcement body to receive and process complaints and provide that:

(i) Complaints must be in writing;

(ii) Upon the filing of a complaint the agency shall serve notice upon the complainant acknowledging the filing and advising the complainant of the time limits and choice of forums provided under the law;

(iii) Upon the filing of a complaint the agency shall promptly serve notice on the respondent or person charged with the commission of a discriminatory housing practice advising of his or her procedural rights and obligations under the law or ordinance together with a copy of the complaint;

(iv) A respondent may file an answer to a complaint.

(2) Delegate to the administrative enforcement body comprehensive authority, including subpoena power, to investigate the allegations of complaints, and power to conciliate complaints, and require that:

(i) The agency commence proceedings with respect to the complaint before the end of the 30th day after receipt of the complaint;

(ii) The agency investigate the allegations of the complaint and complete the investigation within the time-frame established by section 810(a)(1)(B)(iv) of the Act or comply with the notification requirements of section 810(a)(1)(C) of the Act;

(iii) The agency make final administrative disposition of a complaint within one year of the date of receipt of a complaint, unless it is impracticable to do so. If the agency is unable to do so it shall notify the parties, in writing, of the reasons for not doing so;

(iv) Any conciliation agreement arising out of conciliation efforts by the agency shall be an agreement between the respondent, the complainant, and the agency and shall require the approval of the agency;

(v) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the agency determines that disclosure is not required to further the purposes of the law or ordinance.

(3) Not place any excessive burdens on the complainant that might discourage the filing of complaints, such as:

(i) A provision that a complaint must be filed within any period of time less than 180 days after an alleged discriminatory housing practice has occurred or terminated;

(ii) Anti-testing provisions;

(iii) Provisions that could subject a complainant to costs, criminal penalties or fees in connection with filing of complaints.

(4) Not contain exemptions that substantially reduce the coverage of housing accommodations as compared to section 803 of the Act.

(5) Provide the same protections as those afforded by sections 804, 805, 806, and 818 of the Act, consistent with HUD's implementing regulations found at 24 CFR part 100.

(b) In addition to the factors described in paragraph (a) of this section, the provisions of the State or local law must afford administrative and judicial protection and enforcement of the rights embodied in the law.

(1) The agency must have authority to:

(i) Grant or seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint if such action is necessary to carry out the purposes of the law or ordinance;

(ii) Issue and seek enforceable subpoenas;

(iii) Grant actual damages in an administrative proceeding or provide adjudication in court at agency expense to allow the award of actual damages to an aggrieved person;

(iv) Grant injunctive or other equitable relief, or be specifically authorized to seek such relief in a court of competent jurisdiction;

(v) Provide an administrative proceeding in which a civil penalty may be assessed or provide an adjudication in court at agency expense, allowing the assessment of punitive damages against the respondent.

(2) Agency actions must be subject to judicial review upon application by any party aggrieved by a final agency order.

(3) Judicial review of a final agency order must be in a court with authority to:

(i) Grant to the petitioner, or to any other party, such temporary relief, restraining order, or other order as the court determines is just and proper;

(ii) Affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and

(iii) Enforce the order to the extent that the order is affirmed or modified.

(c) The requirement that the state or local law prohibit discrimination on the basis of familial status does not require

that the state or local law limit the applicability of any reasonable local, state or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(d) The state or local law may assure that no prohibition based on discrimination because of familial status applies to housing for older persons substantially as described in 24 CFR part 100, subpart E.

(e) A determination of the adequacy of a state or local fair housing law ''on its face'' is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, this determination is not limited to an analysis of the literal text of the law but must take into account all relevant matters of state or local law. Regulations, directives, rules of procedure, judicial decisions, or interpretations of the fair housing law by competent authorities will be considered in making this determination.

(f) A law will be found inadequate ''on its face'' if it permits any of the agency's decision-making authority to be contracted out or delegated to a non-governmental authority. For the purposes of this paragraph, ''decision-making authority'' shall include:

(1) Acceptance of the complaint;

(2) Approval of the conciliation agreement;

(3) Dismissal of a complaint;

(4) Any action specified in §§ 115.202(a)(2)(iii) or 115.202(b)(1); and

(5) Any decision-making regarding whether the matter will or will not be pursued.

(g) The state or local law must provide for civil enforcement of the law or ordinance by an aggrieved person by the commencement of an action in an appropriate court at least one year after the occurrence or termination of an alleged discriminatory housing practice. The court must be empowered to:

(1) Award the plaintiff actual and punitive damages;

(2) Grant as relief, as it deems appropriate, any temporary or permanent injunction, temporary restraining order or other order; and

(3) Allow reasonable attorney's fees and costs.

§ 115.203 Performance standards.

A state or local fair housing enforcement agency must meet all of the performance standards listed in this section in order to obtain or maintain certification.

(a) Engage in timely, comprehensive and thorough fair housing complaint investigation, conciliation and enforcement activities. The performance assessment will consider the following to determine the effectiveness of an agency's fair housing complaint processing, consistent with such guidance as may be issued by HUD:

(1) The agency's case processing procedures;

(2) The thoroughness of the agency's case processing;

(3) A review of cause and no cause determinations for quality of investigations and consistency with appropriate standards;

(4) A review of conciliation agreements and other settlements;

(5) A review of the agency's administrative closures; and

(6) A review of the agency's enforcement procedures.

(b)(1) Commence proceedings with respect to a complaint:

(i) Before the end of the 30th day after receipt;

(ii) Carry forward such proceedings with reasonable promptness;

(iii) Make final administrative disposition within one year; and

(iv) Within 100 days of receipt of the complaint complete the identified proceedings.

(2) To meet this standard, the performance assessment will consider the timeliness of the agency's actions with respect to its complaint processing, including, but not limited to:

(i) Whether the agency began its processing of fair housing complaints within 30 days of receipt;

(ii) Whether the agency completes the investigative activities with respect to a complaint within 100 days from the date of receipt or, if it is impracticable to do so, notifies the parties in writing of the reason(s) for the delay;

(iii) Whether the agency administratively disposes of a complaint within one year from the date of receipt or, if it is impracticable to do so, notifies the parties in writing of the reasons for the delay; and

(iv) Whether the agency completed the investigation of the complaint and prepared a complete final investigative report.

(3) The performance assessment will also consider documented conciliation attempts and activities and a review of the bases for administrative disposition of complaints.

(c) Conduct compliance reviews of settlements, conciliation agreements and orders issued by or entered into to resolve discriminatory housing practices. The performance assessment will include, but not be limited to:

(1) An assessment of the agency's procedures for conducting compliance reviews;

(2) Terms and conditions of agreements and orders issued;

(3) Application of its authority to seek actual damages, as appropriate; and

(4) Application of its authority to seek and assess civil penalties or punitive damages.

(d) Consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of such practices. The performance assessment will include, but not be limited to:

(1) An assessment of the types of relief sought and obtained by the agency with consideration of the inclusion of affirmative provisions designed to protect the public interest;

(2) The adequacy of the disposition of the complaint;

(3) The relief sought and awarded;

(4) The number of complaints closed with relief and the number closed without relief; and

(5) Whether all the issues and bases were investigated adequately and appropriately disposed of.

(e) Consistently and affirmatively seek the elimination of all prohibited practices under its fair housing law. An assessment under this standard will include, but not be limited to:

(1) A discussion and confirmation of the law or ordinance administered by the agency;

(2) The identification of any amendments, court decisions or other rulings or documentation that may affect the agency's ability to carry out provisions of its fair housing law or ordinance;

(3) Identification of the education and outreach efforts of the agency; and

(4) Identification and discussion of any special requirements of the fair housing law or ordinance.

§ 115.204 Consequences of certification.

(a) Whenever a complaint received by the Assistant Secretary alleges violations of a state or local fair housing law or ordinance administered by an agency that has been certified as substantially equivalent, the complaint will be referred to the agency, and no further action shall be taken by the Assistant Secretary with respect to such complaint except as provided for by the Act, this part, 24 CFR part 103, subpart C, and any written agreements executed by the Agency and the Assistant Secretary.

(b) If HUD determines that a complaint has not been processed in a timely manner in accordance with the performance standards set forth in § 115.203, HUD may reactivate the complaint, conduct its own investigation and conciliation efforts, and make a determination consistent with 24 CFR part 103.

(c) Notwithstanding paragraph (a) of this section, whenever the Assistant Secretary has reason to believe that a complaint demonstrates a basis for the commencement of proceedings against any respondent under section 814(a) of the Act or for proceedings by any governmental licensing or supervisory authorities, the Assistant Secretary shall transmit the information upon which such belief is based to the Attorney General, Federal financial regulatory agencies, other Federal agencies, or other appropriate governmental licensing or supervisory authorities.

§ 115.205 Technical assistance.

(a) The Assistant Secretary, through its FHEO Field Office, may provide technical assistance to the agencies. The agency may request such technical assistance or the FHEO Field Office may determine the necessity for technical assistance and require the agency's cooperation and participation.

(b) The Assistant Secretary, through FHEO Headquarters or Field staff, will require that the agency participate in training conferences and seminars that will enhance the agency's ability to process complaints alleging discriminatory housing practices.

§ 115.206 Request for certification.

(a) A request for certification under this subpart shall be filed with the Assistant Secretary by the State or local official having principal responsibility for administration of the State or local fair housing law. The request shall be supported by the following materials and information:

(1) The text of the jurisdiction's fair housing law, the law creating and empowering the agency, any regulations and directives issued under the law, and any formal opinions of the State Attorney General or the chief legal officer of the jurisdiction that pertain to the jurisdiction's fair housing law.

(2) Organizational information of the agency responsible for administering and enforcing the law.

(3) Funding and personnel made available to the agency for administration and enforcement of the fair housing law during the current operating year, and not less than the preceding three operating years (or such lesser number during which the law was in effect).

(4) If available, data demonstrating that the agency's current practices and past performance comply with the performance standards described in § 115.203.

(5) Any additional information which the submitting official may wish to be considered.

(b) The request and supporting materials shall be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. A copy of the request and supporting materials will be kept available for public examination and copying at:

(1) The office of the Assistant Secretary;

(2) The HUD Field Office in whose jurisdiction the State or local jurisdiction seeking recognition is located; and

(3) The office of the State or local agency charged with administration and enforcement of the State or local law.

§ 115.207 Procedure for interim certification.

(a) Upon receipt of a request for certification filed under § 115.206, the Assistant Secretary may request further information necessary for a determination to be made under this section. The Assistant Secretary may consider the relative priority given to fair housing administration, as compared to the agency's other duties and responsibilities, as well as the compatibility or potential conflict of fair housing objectives with these other duties and responsibilities.

(b) *Interim certification.* If the Assistant Secretary determines, after application of the criteria set forth in § 115.202 that the State or local law or ordinance, on its face, provides substantive rights, procedures, remedies, and judicial review procedures for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the Assistant Secretary may offer to enter into an Agreement for the Interim Referral of Complaints and Other Utilization of Services (Interim Agreement). The interim agreement will outline the procedures and authorities upon which the interim certification is based.

(c) Such interim agreement, after it is signed by all appropriate signatories, will result in the agency receiving interim certification.

(d)(1) Interim agreements shall be for a term of no more than three years. The Assistant Secretary, through the FHEO Field Office, will conduct one or more on-site assessments to determine whether the agency administers its fair housing law or ordinance in a manner that is substantially equivalent to the Act.

(2) *Performance Improvement Plan.* If the agency is not administering its law or ordinance in a manner that is substantially equivalent, the Assistant Secretary, may, but need not, offer a Performance Improvement Plan (PIP) to the agency. The PIP will outline the agency's deficiencies, identify necessary corrective actions, and include a timetable for completion.

(3) If the agency receives a PIP, funding under the FHAP may be suspended for the duration of the PIP. Once the agency has implemented corrective actions to eliminate the deficiencies, and such corrective actions are accepted by the Assistant Secretary, funding may be reinstated.

§ 115.208 Suspension of interim certification.

(a) *Suspension based on changes in the law.* (1) The Assistant Secretary may suspend the agency's interim certification if the Assistant Secretary has reason to believe that the State or locality may have limited the effectiveness of the agency's implementation of the fair housing law or ordinance by:

(i) Amending the fair housing law or ordinance;

(ii) Adopting rules or procedures concerning the fair housing law or ordinance; or

(iii) Issuing judicial or other authoritative interpretations of the fair housing law or ordinance.

(2) If the Assistant Secretary suspends interim certification under paragraph (a)(1) of this section, such suspension will remain in effect until the Assistant Secretary conducts a review of the changes in language and/or interpretation and determines whether the law or ordinance remains substantially equivalent to the Act on its face or in its operations. Such suspension shall not exceed 180 days.

(3) If the Assistant Secretary determines that, notwithstanding the actions taken by the State or locality as described in paragraph (a)(1), the law or ordinance remains substantially equivalent on its face and in operation to the Act, the Assistant Secretary will rescind the suspension and reinstate the agency's interim certification and/or recommend the agency for certification. HUD will provide full or partial reimbursement for cases processed during the period of the suspension.

(4) If the Assistant Secretary determines that the actions taken by the State or locality do limit the agency's effectiveness interim certification will be denied pursuant to § 115.209.

(b) *Suspension based on agency performance.* (1) The Assistant Secretary may suspend the interim certification of an agency charged with the administration of a fair housing law or ordinance if the Assistant Secretary

has reason to believe that the agency's performance does not comply with the criteria set forth by this part. Such suspension shall not exceed 180 days.

(2) If the agency is suspended pursuant to paragraph (b) of this section, the FHEO Field Office may elect not to provide payment for complaints processed within that period of time unless and until the Assistant Secretary determines that the agency is fully in compliance with § 115.203. The FHEO Field Office will provide technical assistance to the agency during this period of time.

(3) During the period of a suspension the Assistant Secretary shall not refer complaints to the agency.

(4) Suspension under paragraph (b) of this section renders the agency ineligible to receive Fair Housing Assistance Program Funds under subpart C of this part, pending correction of the deficiencies by the agency.

(5) Before the end of the suspension, a final performance assessment will be provided to the Assistant Secretary upon which a determination will be made as to the adequacy of the agency's performance.

(c) HUD will provide an agency with notice of the specific reasons for the suspension of its interim certification and an opportunity to respond, in accordance with the procedures set forth in HUD issued guidance.

§ 115.209 Denial of interim certification.

(a) If the Assistant Secretary determines, after application of the criteria set forth in this part that the State and local law or ordinance, on its face or in its operation, does not provide substantive rights, procedures, remedies, and availability of judicial review for alleged discriminatory housing practices which are substantially equivalent to those provided in the Fair Housing Act, the Assistant Secretary shall inform the State or local official in writing of the reasons for that determination.

(b) The agency, within 20 days from the date of the receipt of this notice, may submit, in writing, any opposition to the planned denial of interim certification to the Assistant Secretary. The Assistant Secretary will evaluate all pertinent written comments, information, and documentation. If, after reviewing all materials submitted by the agency, the Assistant Secretary is still of the opinion that interim certification should be denied, the Assistant Secretary will inform the agency in writing of that determination.

(c) If the agency does not, within 20 days of receipt of the Assistant Secretary's notice of denial of interim certification, make a request of the Assistant Secretary under paragraph (b) of this section to submit additional data, views, or comments, no further action shall be required of the Assistant Secretary and denial of interim certification shall occur.

§ 115.210 Procedure for certification.

(a) *Certification.* (1) If the Assistant Secretary determines, after application of the criteria set forth in §§ 115.202, 115.203 and this section, that the State or local law or ordinance, both ''on its face'' and ''in operation,'' provides substantive rights, procedures, remedies, and judicial review procedures for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the Assistant Secretary may enter into a Memorandum of Understanding (MOU) with the agency.

(2) The MOU is a written agreement providing for the referral of complaints to the agency and for communication procedures between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the agency's continuing substantial equivalency certification.

(3) A MOU, after it is signed by all appropriate signatories, may authorize an agency to be a certified agency for a period of not more than five years.

(b) *Performance Improvement Plan.* (1) If the agency is not administering its law or ordinance in a manner that is substantially equivalent, the Assistant Secretary, may, but need not, offer a Performance Improvement Plan (PIP) to the agency. The PIP will outline the agency's deficiencies, identify necessary corrective actions, and include a timetable for completion.

(2) If the agency receives a PIP, funding under the FHAP may be suspended for the duration of the PIP. Once the agency has implemented corrective actions to eliminate the deficiencies, and such corrective actions are accepted by the Assistant Secretary, funding may be reinstated.

(c) *Annual assessments.* The Assistant Secretary shall annually assess the performance of an agency to determine whether it continues to qualify for certification under this part. If the Assistant Secretary affirmatively concludes that the agency's law and performance have complied with the requirements of this part in each of the five years, the Assistant Secretary may offer the agency an updated Memorandum of Understanding.

(d) *Interim certification required prior to certification.* An agency shall receive interim certification prior to receiving certification.

§ 115.211 Suspension of certification.

(a) *Suspension based on changes in the law.* (1) The Assistant Secretary may suspend the agency's certification if the Assistant Secretary has reason to believe that the State or locality may have limited the effectiveness of the agency's implementation of the fair housing law or ordinance by:

(i) Amending the fair housing law or ordinance;

(ii) Adopting rules or procedures concerning the fair housing law or ordinance; or

(iii) Issuing judicial or other authoritative interpretations of the fair housing law or ordinance.

(2) If the Assistant Secretary suspends certification under paragraph (a)(1) of this section, such suspension will remain in effect until the Assistant Secretary conducts a review of the changes in language and/or interpretation and determines whether the law or ordinance remains substantially equivalent on its face and in its operation to the Act. Such suspension shall not exceed 180 days.

(3) If the Assistant Secretary determines that the law or ordinance remains substantially equivalent on its face and in operation to the Act, the Assistant Secretary will rescind the suspension and reinstate the agency's interim certification and/or recommend the agency for certification. HUD will provide full or partial reimbursement for cases processed during the period of the suspension.

(4) If the Assistant Secretary determines that the actions taken by the State or locality do limit the agency's effectiveness, certification will be withdrawn pursuant to § 115.212.

(b) *Suspension based on agency performance.* (1) The Assistant Secretary may suspend the certification of an agency charged with the administration of a fair housing law or ordinance, if the Assistant Secretary has reason to believe that the agency's performance does not comply with the criteria set forth by this part. Such suspension shall not exceed 180 days.

(2) If the agency is suspended pursuant to paragraph (b) of this section, the FHEO Field Office may elect not to provide payment for complaints processed within that period of time unless and until the Assistant Secretary determines that the agency is fully in compliance with § 115.203. The FHEO Field Office will provide technical assistance to the agency during this period of time.

(3) During the period of a suspension the Assistant Secretary shall not refer complaints to the agency.

(4) Suspension under this paragraph also renders the agency ineligible to receive Fair Housing Assistance Program Funds under subpart C of this part, pending correction of the deficiencies by the agency.

(5) Before the end of the suspension, a final performance assessment will be provided to the Assistant Secretary upon which a determination will be made as to the adequacy of the agency's performance.

(c) HUD will provide an agency with notice of the specific reasons for the suspension of its certification and an opportunity to respond, in accordance with the procedures set forth in HUD issued guidance.

§ 115.212 Withdrawal of certification.

(a) If the Assistant Secretary finds, as a result of a review undertaken in accordance with this part, that the agency's fair housing law or ordinance no longer meets the requirements of this part, the Assistant Secretary shall propose to withdraw the certification previously granted.

(b) The Assistant Secretary will propose withdrawal of certification under paragraph (a) of this section unless further review and information or documentation establishes that the current law and/or the agency's administration of the law meets the criteria set out in this part.

(c) If the Assistant Secretary determines, after application of the criteria set forth in this part, that the state or local law or ordinance, in operation, does not provide substantive rights, procedures, remedies, and availability of judicial review for alleged discriminatory housing practices which are substantially equivalent to those provided in the Fair Housing Act, the Assistant Secretary shall inform the State or local official in writing of the reasons for that determination.

Subpart C—Fair Housing Assistance Program (FHAP)

§ 115.300 Purpose.

The purpose of the Fair Housing Assistance Program (FHAP) is to provide assistance to State and local fair housing enforcement agencies. The intent of this funding program is to build a coordinated intergovernmental enforcement effort to further fair housing and to encourage the agencies to assume a greater share of the responsibility for the administration and enforcement of their fair housing laws and ordinances. This financial assistance is designed to provide support for:

(a) The processing of dual-filed complaints;

(b) Training under the Fair Housing Act and the agencies' fair housing law;

(c) The provision of technical assistance;

(d) The creation and maintenance of data and information systems; and

(e) The development and enhancement of other fair housing enforcement projects.

§ 115.301 Agency eligibility criteria.

Any agency with certification or interim certification under subpart A of this part, and which has entered into a MOU or interim agreement, is eligible to participate in the FHAP.

§ 115.302 Capacity building funds.

(a) Capacity building (CB) funds are funds that HUD may provide to an agency with interim certification during the agency's first three years of participation in the FHAP. Agencies receiving CB funds are not eligible to receive contributions funds under § 115.304.

(b) CB funds will be provided in a fixed annual amount to be utilized for the eligible activities established pursuant to § 115.303. However, in the second and third year of the agency's participation in the FHAP, HUD has the option to permit the agency to receive CB funding on a per case basis, rather than in a single annual amount.

(c) In order to receive CB funding, agencies will be required to submit a statement of work which identifies:

(1) The objectives and activities to be carried out with the CB funds received;

(2) A plan for training all of the agency's employees involved in the administration of the agency's fair housing law or ordinance;

(3) A statement of the agency's intention to participate in HUD-sponsored training in accordance with the training requirements set out in the cooperative agreement;

(4) A description of the agency's complaint processing data and information system or, alternatively, whether the agency plans to use CB funds to purchase and install a data system; and

(5) A description of any other fair housing activities that the agency will undertake with its CB funds. All such activities must address matters affecting fair housing enforcement which are cognizable under the Fair Housing Act. Any activities which do not address the implementation of the agency's fair housing law or ordinance, and which are therefore not cognizable under the Fair Housing Act, will be disapproved.

§ 115.303 Eligible activities For capacity building funds.

The primary purposes of capacity building funding is to provide for complaint activities and to support activities that produce increased awareness of fair housing rights and remedies. All such activities must support the agency's administration of its fair housing law or ordinance and address matters affecting fair housing which are cognizable under the Fair Housing Act. HUD will periodically publish a list of eligible activities in the Federal Register.

§ 115.304 Agencies eligible for contributions funds.

(a) An agency that has received CB funds for three consecutive years is eligible for contributions funding. Contributions funding consists of three categories:

(1) Complaint Processing (CP) funds;

(2) Administrative Costs (AC) funds; and

(3) Special Enforcement Efforts (SEE) funds (§ 115.305 sets forth the requirements for SEE funding).

(b) *CP funds.* (1) Agencies receiving CP funds will receive such support based solely on the number of complaints processed by the agency and accepted for payment by the Director of FHEO during a consecutive, specifically identified, 12-month period. Normally this period will be the previous year's funding cycle.

(2) Funding for agencies in their fourth year of participation in the FHAP will be based on the number of complaints acceptably processed by the agency during the agency's third year of participation in the FHAP.

(c) *Administrative Cost (AC) funds.* (1) Agencies which acceptably process 100 or more cases will receive no less than 10 percent of the agency's annual FHAP payment amount for the preceding year, in addition to case processing funds, contingent on fiscal year appropriations. Agencies that acceptably process fewer than 100 cases will receive a flat rate contingent on fiscal year appropriations.

(2) Agencies will be required to provide HUD with a statement of how they intend to use the AC funds. HUD may require that some or all AC funding be directed to activities designed to create, modify, or improve local, regional, or national information systems concerning fair housing matters (including the purchase of state of the art computer systems and getting on line or internet access, etc.).

§ 115.305 Special enforcement effort (SEE) funds.

(a) SEE funds are funds that HUD will provide to an agency to enhance

enforcement activities of the agency's fair housing law or ordinance. SEE funds will be a maximum of 20% of the agency's total FHAP cooperative agreement for the previous contract year, based on approval of eligible activity or activities, and based on the appropriation of funds. All agencies receiving contributions funds are eligible to receive SEE funds if they meet three of the six criteria set out in paragraphs (a)(1) through (6):

(1) The agency has taken action to enforce a subpoena or make use of its prompt judicial action authority within the past year.

(2) The agency has held at least one administrative hearing or has had at least one case on a court's docket for civil proceedings during the past year.

(3) At least ten percent of the agency's fair housing caseload resulted in written conciliation agreements providing monetary relief for the complainant as well as remedial action, monitoring, reporting and public interest relief provisions.

(4) The agency has had in the most recent three years, or is currently handling, at least one major fair housing systemic investigation requiring an exceptional amount of expenditure of funds.

(5) The agency's administration of its fair housing law or ordinance received meritorious mention for its complaint processing or other fair housing activities that were innovative.

(6) The agency must have fully investigated 10 fair housing complaints during the previous funding year.

(b) Notwithstanding the eligibility criteria set forth in paragraph (a) of this section, an agency is ineligible for SEE funds if:

(1) Twenty percent or more of an agency's fair housing complaints result in administrative closures; or

(2) The agency is currently on a PIP, or if its interim certification or certification has been suspended during the fiscal year in which SEE funds are sought.

(c) SEE funding amounts are subject to the FHAP appropriation by Congress and will be described in writing in the cooperative agreements annually. HUD will periodically publish a list of activities eligible for SEE funding in the Federal Register.

§ 115.306 Training funds.

(a) All agencies are eligible to receive training funds. Training funds are fixed amounts based on the number of agency employees to be trained and shall be allocated based on the FHAP appropriation. Training funds may be used only for HUD-approved or HUD-sponsored training. Agency initiated training or other formalized training may be included in this category. However, such training must first be approved by the Cooperative Agreement Officer (CAO) and the Government Technical Representative (GTR). Specifics on the amount of training funds that an agency will receive and, if applicable, amounts that may be deducted, will be set out in the cooperative agreement each year.

(b) All staff of the agency responsible for the administration of the fair housing law or ordinance must participate in mandatory FHAP training sponsored by HUD at the national and field office levels. If the agency does not participate in the mandatory national and field office HUD-sponsored training, training funds will be deducted from their overall training amount.

§ 115.307 Additional requirements for participation in the FHAP.

(a) Agencies which participate in the FHAP must:

(1) Conform to reporting and record maintenance requirements determined by the Assistant Secretary;

(2) Agree to on-site technical assistance and guidance and implementation of corrective actions set out by the Department in response to deficiencies found during the technical assistance or performance assessment evaluations of the agency's operations;

(3) Agree to implement and adhere to policies and procedures (as their laws and ordinances will allow) provided to the agencies by the Assistant Secretary, including but not limited to guidance on investigative techniques, case file preparation and organization, implementation of data elements for complaint tracking, etc.;

(4) Spend at least twenty (20) percent of its total annual budget on fair housing activities; and

(5) Not unilaterally reduce the level of financial resources currently committed to fair housing complaint processing (budget and staff reductions or other actions outside the control of the agency will not, alone, result in a negative determination for the agency's participation in the FHAP).

(b) The agency's refusal to provide information, assist in implementation, or carry out the requirements of paragraph (a) of this section may result in the denial or interruption of its receipt of FHAP funds.

§ 115.308 Standards for FHAP program review.

HUD will conduct reviews of the agency's cooperative agreement implementation. This review will also identify:

(a) How the agency used the FHAP funds received;

(b) Whether its draw-down of funds was timely;

(c) Whether the agency has been audited and received copies of the audit reports in accordance with applicable rules and regulations for State and local governmental entities; and

(d) If the agency complied with all certifications and assurances required by HUD in the cooperative agreement.

§ 115.309 Reporting and recordkeeping requirements.

(a) The agency shall establish and maintain records demonstrating:

(1) Its financial administration of the FHAP funds; and

(2) Its performance under the FHAP.

(b) In accordance with the cooperative agreement in effect between the agency and HUD, the agency will provide to HUD the agency reports maintained pursuant to paragraph (a) of this section. The agency will provide reports to HUD in accordance with the cooperative agreement in effect between the agency and HUD for frequency and content, regarding complaint processing, training, data and information systems, enforcement and other activities explaining how FHAP funds were expended and used.

(c) The agency will permit reasonable public access to its records, consistent with the jurisdiction's requirements for release of information. Documents relevant to the agency's participation in FHAP must be made available at the agency's office during normal working hours (except that documents with respect to ongoing fair housing complaint investigations are exempt from public review consistent with Federal and/or State law).

(d) The Secretary, the Inspector General of HUD, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to all pertinent books, accounts, reports, files, and other payments for surveys, audits, examinations, excerpts, and transcripts as they relate to the agency's participation in FHAP.

(e) All files will be kept in such fashion as to permit audits under applicable procurement regulations and guidelines and the Single Audit requirements for State and local agencies.

(f) The FHAP financial records and files will be kept at least three years on-site after any cooperative agreement has terminated.

§ 115.310 Subcontracting under the FHAP.

If an agency subcontracts to a public or private agency any activity for which

the subcontractor will receive FHAP funds, the agency must ensure and certify in writing that the subcontractor is:

(a) Using services and facilities that are accessible in accordance with the Americans with Disability Act (ADA) (42 U.S.C. 12101) and Section 504 of the 1973 Rehabilitation Act (29 U.S.C. 701);

(b) Complying with the standards of Section 3 of the Housing and Urban Development Act of 1968 (42 U.S.C. 1441); and

(c) Furthering fair housing.

§ 115.311 Corrective and remedial action.

(a) If HUD makes a preliminary determination that an agency has not complied with § 115.309, the agency will be given written notice of this determination and an opportunity to show, through demonstrable facts and data, that it has done so within a time prescribed by HUD.

(b) If an agency fails to demonstrate to HUD's satisfaction that it has met program review standards, HUD will request the agency to submit and comply with proposals for action to correct, mitigate, or prevent performance deficiencies, including, but not limited to:

(1) Preparing and/or following a schedule of actions for carrying out the affected fair housing activities;

(2) Establishing and/or following a management plan that assigns responsibilities for carrying out the actions required;

(3) Canceling or revising activities likely to be affected by a performance deficiency before expending FHAP funds for the activities; and

(4) Redistributing or suspending disbursement of FHAP funds that have not yet been disbursed.

(c) HUD may condition the use of FHAP award amounts with respect to an agency's succeeding fiscal year's allocation on the satisfactory completion by the agency of appropriate corrective actions. When the use of funds is so conditioned, HUD will specify the deficiency(ies), the required corrective action(s), and the time allowed for taking these actions. Failure of the agency to complete the actions as specified will result in a reduction or withdrawal of the FHAP allocation in an amount not to exceed the amount conditionally granted.

Appendix I [Removed]

3. Appendix I to subchapter A of chapter I of title 24 of the Code of Federal Regulations is removed.

Date: July 29, 1996.

Elizabeth K. Julian,

Assistant Secretary for Fair Housing and Equal Opportunity.

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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.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a list of public bills from the 104th 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. 3107/P.L. 104–172

Iran and Libya Sanctions Act of 1996 (Aug. 5, 1996; 110 Stat. 1541)

H.R. 1051/P.L. 104–173

To provide for the extension of certain hydroelectric projects located in the State of West Virginia. (Aug. 6, 1996; 110 Stat. 1552)

H.R. 1114/P.L. 104–174

To authorize minors who are under the child labor provisions of the Fair Labor Standards Act of 1938 and who are under 18 years of age to load materials into balers and compactors that meet appropriate American National Standards Institute design safety standards. (Aug. 6, 1996; 110 Stat. 1553)

S. 531/P.L. 104–175

To authorize a circuit judge who has taken part in an in banc hearing of a case to continue to participate in that case after taking senior status, and for other purposes. (Aug. 6, 1996; 110 Stat. 1556)

S.J. Res. 20/P.L. 104–176

Granting the consent of Congress to the compact to provide for joint natural resource management and enforcement of laws and regulations pertaining to natural resources and boating at the Jennings Randolph Lake Project lying in Garrett County, Maryland and Mineral County, West Virginia, entered into between the States of West Virginia and Maryland. (Aug. 6, 1996; 110 Stat. 1557)