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Wednesday
August 21, 1996

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Presidential Documents

Title 3—

The President

Presidential Determination No. 96–41 of August 12, 1996

Suspending Restrictions on U.S. Relations With the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Middle East Peace Facilitation Act of 1995, title VI, Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996, Public Law 104–107 (''the Act''), I hereby:

(1) Certify that it is in the national interest to suspend the application of the following provisions of law through February 12, 1997:

(A) Section 307 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2227), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

(B) Section 114 of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (22 U.S.C. 287e note), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

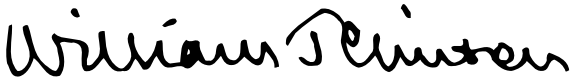
(C) Section 1003 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 5202); and

(D) Section 37, Bretton Woods Agreement Act (22 U.S.C. 286w), as it applies to the granting to the Palestine Liberation Organization of observer status or other official status at any meeting sponsored by or associated with the International Monetary Fund.

(2) certify that the Palestine Liberation Organization, the Palestinian Authority, and successor entities are complying with the commitments described in section 604(b)(4) of the Act.

(3) certify that funds provided pursuant to the exercise of the authority of the Act and the authorities under section 583(a) of Public Law 103–236 and section 3(a) of Public Law 103–125 have been used for the purposes for which they were intended.

You are authorized and directed to transmit this determination to the Congress and to publish it in the Federal Register.



THE WHITE HOUSE,
Washington, August 12, 1996.

[FR Doc. 96–21472
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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV96–906–3IFR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Interim Final Rule To Revise Pack and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule revises pack requirements for grapefruit and certain types of oranges under the marketing order covering oranges and grapefruit grown in the Lower Rio Grande Valley in Texas to allow larger sizes of fruit to be marketed in fresh channels. This rule also reduces current minimum size requirements for Texas grapefruit. These actions were recommended by the Texas Valley Citrus Committee (TVCC), the agency responsible for local administration of the marketing order. These changes will enable the industry to market a wider range of sizes of citrus fruit in fresh market channels, thereby meeting consumer demand, increasing sales, and improving returns to growers.

DATES: Effective on August 22, 1996; comments received by September 20, 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 submitted in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, or by facsimile at (202) 720–5698. Comments should reference this docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2526–S, Washington, DC 20090–6456, telephone (202) 690–3670; or Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1331 E. Hackberry Street, McAllen, Texas 78501; telephone (210) 682–2833. 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, DC 20090–6456; telephone (202) 720–2491, Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906 [7 CFR Part 906], as amended, regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, 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.''

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

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This interim final rule is not intended to have retroactive effect. This interim 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 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 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 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 20 handlers of oranges and grapefruit subject to regulation under the order and approximately 2,000 orange and grapefruit producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. A majority of Texas citrus handlers and producers may be classified as small entities.

This interim final rule revises pack requirements for grapefruit and certain varieties of oranges to allow larger sizes to be marketed in fresh channels. It also reduces the minimum size requirements in effect for grapefruit. This rule will enable handlers to market a broader range of sizes of citrus fruit in fresh market outlets, thereby meeting consumer demand, increasing fresh fruit sales, and enhancing returns to handlers and producers.

Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action is in accordance with § 906.40(a) of the order. This section authorizes the Secretary to limit the

handling of particular grades, sizes, qualities, maturities, or packs of any or all varieties of fruit during a specified period or periods. Currently, minimum grade and size requirements, as well as pack and container requirements, are in effect for both grapefruit and oranges throughout the season. Shipments for certain purposes, including processing, are exempt from these requirements.

The TVCC met on May 29, 1996, and unanimously recommended changes in current pack and minimum size requirements. The TVCC meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the order. TVCC meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews TVCC recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

Revision of Pack Requirements

Pack requirements for oranges and grapefruit are in effect under § 906.340 of the order's rules and regulations. These requirements provide, among other things, that oranges and grapefruit be packed in accordance with certain size designations. These size designations are defined in terms of minimum and maximum diameters.

Oranges are divided into two categories for the purpose of pack regulations: (1) Navel, Valencia and similar late-type oranges, and (2) all other oranges. Navel, Valencia and similar late-type oranges must be packed in accordance with 13 size designations. The smallest of these is Size 324, which ranges from $2\frac{1}{16}$ to $2\frac{8}{16}$ inches in diameter. The largest size defined is Size 46, which ranges from $4\frac{3}{16}$ to 5 inches in diameter. Oranges other than navel, Valencia and similar late-type oranges are required to be packed in accordance with the various pack sizes in section 51.691(c) of the United States Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona), hereinafter referred to as the ''orange standards.''

The orange standards define seven pack sizes, from Size 324 ($2\frac{3}{16}$ to $2\frac{8}{16}$ inches in diameter) to Size 100 ($3\frac{7}{16}$ to $3\frac{13}{16}$ inches in diameter). To allow for variations incident to proper packing, a tolerance for undersized and oversized fruit is provided. The tolerance is in terms of the number of fruit in a sample that may be off-size—with the actual number increasing as the sample size increases. Otherwise oversized oranges other than navel, Valencia and similar late-type oranges would be diverted to exempt outlets, such as processing.

The TVCC recommended revising the orange pack regulations to allow all types of oranges to be packed in the full range of sizes—from Size 324 to Size 46. Thus, this rule revises Section 906.340(a)(2)(i)(a), which specifies pack requirements for oranges other than navel, Valencia and similar late-type oranges, to define the 13 size designations authorized for such oranges. The seven smallest sizes are defined in the same way they are in the orange standards. (The minimum diameters are $\frac{2}{16}$ inch larger than those specified for navels, Valencias and similar late-type oranges, while the maximum diameters are the same.) The six sizes added for these oranges are defined similarly (that is, the minimum diameters differ, but the maximum diameters are the same). The differences in the minimum diameters take into account varietal differences between these two categories of oranges and current industry practice.

Grapefruit are required to be packed within the diameter limits specified for the various pack sizes defined in § 51.630(c) of the United States Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona), hereinafter referred to as the grapefruit standards. Exceptions are that the minimum diameter for pack size 96 grapefruit is $3\frac{9}{16}$ inches, and for pack size 112 grapefruit, the minimum diameter is $3\frac{5}{16}$ inches.

The grapefruit standards define eight pack sizes. The smallest is Size 125/126, which ranges from a minimum of 3 inches to a maximum of $3\frac{8}{16}$ inches in diameter. The largest is Size 46 which ranges from $4\frac{5}{16}$ to 5 inches in diameter. This rule adds a new, larger Size 36 grapefruit, which ranges in size from $4\frac{15}{16}$ to $5\frac{9}{16}$ inches in diameter.

Improved irrigation methods, technological advances, and improved cultural practices have resulted in the Texas citrus industry growing larger, good quality fruit. Current pack regulations preclude this fruit from being marketed in fresh channels (with the exception of small amounts allowed to exceed the maximum specified diameters), and it is generally diverted to the processing market. The processing market is currently in an oversupply situation and yields low returns to growers. Providing for additional supplies (an estimated 5 to 10 percent) to be marketed fresh should, therefore, enhance grower returns.

Additionally, the TVCC indicates that there has been increased demand from consumers in recent years for a broader range of sizes of oranges and grapefruit. Providing that these larger sizes may be shipped will provide greater supplies and more choices to consumers. It should also make the Texas citrus industry more competitive with other citrus-growing areas, which have adapted their marketing efforts to meet consumer demands.

Finally, varying growing conditions in Texas result in diverse size distributions of oranges and grapefruit from season to season. Severe drought conditions may cause a season's crop to be 5 to 10 percent small sizes. Conversely, a rainy season may result in 5 to 10 percent large sizes. These changes in pack requirements, to approve the shipment of all commercial sizes of oranges and grapefruit, will provide handlers with the flexibility to market available supplies in light of existing market conditions.

Revision of Minimum Size Requirements for Grapefruit

Minimum size requirements for grapefruit are in effect under § 906.365 of the order's rules and regulations. Currently, during the period November 16 through January 31 each season, grapefruit must be at least pack size 96, with a minimum diameter of $3\frac{9}{16}$ inches. At other times, grapefruit that is pack size 112 (with a minimum diameter of $3\frac{5}{16}$ inches), may be shipped if it grades at least U.S. No. 1. Otherwise, the minimum grade requirement for grapefruit is Texas Choice. The smaller fruit is subject to a higher grade requirement because experience indicates that a market exists for this smaller fruit only if it meets a higher quality standard.

This interim final rule provides that pack size 112 grapefruit (if it grades at least U.S. No. 1) may be shipped throughout the entire season. This has been done in recent seasons. The Texas citrus industry has found that there is a market for this smaller grapefruit, particularly in juice bars, health food stores, and other types of retail outlets that use smaller fruit for juicing. In addition, some markets, such as Canada, prefer smaller fruit.

Also, as previously indicated, drought conditions can lead to an abundance of smaller sizes. Such conditions currently exist in the Lower Rio Grande Valley in Texas. The expected small sized grapefruit, which cannot be marketed profitably in processing outlets, will be made available to meet fresh market needs through this rule. This action is

expected to result in improved grower returns.

Permitting shipments of pack size 112 grapefruit grading at least U.S. No. 1 will enable Texas grapefruit handlers to meet market needs and compete with similar size grapefruit expected to be shipped from Florida.

These changes in pack and size requirements for Texas oranges and grapefruit are intended to broaden the range of sizes and increase the amount of fruit available to consumers and increase grower returns. An alternative to this rule is to leave the current regulations in place. However, that would result in more of the larger oranges and grapefruit and the smaller grapefruit going to processors, and less fruit going to the more lucrative fresh market, which yields higher returns to growers.

After consideration of all relevant material presented, including the TVCC's recommendation, and other available information, it is found that this interim final 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) To be of maximum benefit, this action should be effective by September 1, the beginning of the 1996–97 season; (2) Texas citrus handlers are aware of this relaxation which was recommended by the TVCC at a public meeting, and they will need no additional time to comply with its requirements; and (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 906

Oranges, Marketing agreements, Grapefruit, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Paragraph (a)(2)(i)(a) of § 906.340 is revised to read as follows:

§ 906.340 Container, pack, and container marking regulations.

(a) * * *

(2) * * *

(i) * * *

(*a*) Oranges, except Navel oranges and Valencia and similar late-type oranges, when packed in any box, bag, or carton shall be sized in accordance with the sizes set forth in the following Table I, except as otherwise provided by regulations issued pursuant to this part, and otherwise meet the requirements of standard pack; and when in containers not packed according to a definite pattern shall be sized in accordance with the sizes set forth in the following Table I and otherwise meet the requirements of standard sizing: *Provided,* That the packing tolerances, which are set forth in the U.S. Standards for Oranges (Texas and States other than Florida, California, and Arizona), shall be applicable to fruit so packed.

TABLE I.—1 2/5 BUSHEL BOX

[Diameter in inches]

Pack size	Minimum	Maximum
46's	4 5/16	5
54's or 56's	4 2/16	4 12/16
64's	3 15/16	4 8/16
70's or 72's	3 13/16	4 5/16
80's	3 10/16	4 2/16
100's	3 7/16	3 13/16
112's	3 5/16	3 11/16
125's	3 3/16	3 9/16
163's	2 15/16	3 5/16
200's	2 11/16	3 1/16
252's	2 7/16	2 12/16
288's	2 4/16	2 9/16
324's	2 3/16	2 8/16

3. Paragraph (a)(2)(i)(*c*) of § 906.340 is amended by redesignating ''Table I'' as ''Table II''.

4. Paragraph (a)(2)(ii) of § 906.340 is revised to read as follows:

§ 906.340 Container, pack, and container marking regulations.

(a) * * *

(2) * * *

(ii) *Grapefruit.* Grapefruit, when packed in any box, bag or carton, shall be within the diameter limits specified for the various pack sizes in 7 CFR 51.630(c) of the United States Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona): *Provided,* That the minimum diameter limit for pack size 36 grapefruit shall be 4 15/16 inches and the maximum diameter limit shall be 5 9/16 inches; *Provided,* That the minimum diameter limit for pack size 96 grapefruit shall be 3 9/16 inches and for pack size 112 grapefruit shall be 3 5/16 inches; and *Provided further,* That any grapefruit in boxes or cartons shall be packed in accordance with the requirements of standard pack.

* * * * *

5. Section 906.365 is amended by revising paragraph (a)(4) to read as follows:

§ 906.365 Texas Orange and Grapefruit Regulation 34.

(a) * * *

(4) Such grapefruit are at least pack size 96, except that the minimum diameter limit for pack size 96 grapefruit in any lot shall be 3 9/16 inches: *Provided,* that any handler may handle grapefruit, which are smaller than pack size 96, if such grapefruit grade at least U.S. No. 1 and they are at least pack size 112, except that the minimum diameter limit for pack size 112 grapefruit in any lot shall be 3 5/16 inches.

* * * * *

Dated: August 16, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–21331 Filed 8–20–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 911 and 944

[Docket No. FV96–911–2FR]

Limes Grown in Florida and Imported Limes; Change in Regulatory Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: This rule suspends the regulatory period currently prescribed under the lime marketing order and the lime import regulations. The marketing order regulates the handling of limes grown in Florida and is administered locally by the Florida Lime Administrative Committee (committee). By temporarily reducing the regulatory period and its associated costs, this rule should decrease industry expenses and allow the committee to evaluate its impact. The changes in import requirements are necessary under section 8e of the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATES: June 1, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Aleck Jonas, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–4770, Fax: (941) 299–5169; or Caroline Thorpe, Marketing Order Administration Branch, F&V, AMS, USDA, room

2522–S, P.O. Box 96456, Washington, DC 20090–6456: telephone: (202) 720–8139, Fax: (202) 720–5698. 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, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 911 (7 CFR Part 911), as amended, regulating the handling of limes, hereinafter referred to as the ''order.'' This 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 limes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) is issuing this 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 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 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 10 handlers subject to regulation under the order and about 115 producers of Florida limes. There are approximately 35 importers of limes. Small agricultural service firms, which include lime handlers and importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A majority of these handlers, producers, and importers may be classified as small entities.

This rule changes the regulatory period by suspending both the domestic and import regulations from June 1, 1997 through December 31, 1997. By temporarily reducing the regulatory period and its associated costs, this rule should provide a decrease in industry expenses. Both large and small growers, handlers and importers should benefit from the reduced costs of no regulations, such as no inspection fees during the deregulated period.

In addition, small handlers usually use block inspection. Under block inspection, the fruit is packed and palletized, and then inspection is requested. The handler must wait for an available Federal-State inspector to inspect and certify the limes prior to shipment. Larger facilities use continuous inspection because their volume of fruit justifies the constant presence of an inspector. By relaxing regulations for this seven month period, small handlers will benefit by being able to ship fruit without the delay of waiting for an inspector. Small and large handlers should both benefit from the reduction in inspection costs and committee expenses from fewer meetings and less compliance monitoring. Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Section 911.48 of the lime marketing order provides authority to issue regulations establishing specific pack, container, grade and size requirements. These requirements are specified under Sections 911.311, 911.329 and 911.344. Section 911.51 requires inspection and certification that these requirements are met. Currently, there is no regulatory period stated in the order, and these regulations are applied on a continuous year-round basis.

This rule changes the regulatory period by suspending both the domestic and import regulations from June 1, 1997 through December 31, 1997. The committee met on December 13, 1995, and in a vote of six in favor and four opposed, recommended a change in the regulatory period.

There is general agreement in the industry for the need to reduce costs and increase grower returns under current market conditions. The committee made this recommendation to decrease industry expenses by reducing the regulatory period and its associated costs. Prior to Hurricane Andrew, there were approximately 6,500 producing acres of limes in the production area. Currently, there are approximately 1,500 acres of producing lime trees in the production area. Growers are expending approximately $2,500 per acre to plant new groves and replant lost ones. They are also spending approximately $1,500 per acre per year to maintaining new groves of young trees which will not produce fruit in commercially significant volumes for several years, thus, giving no return for their investments.

During the 1991–1992 season, prior to Hurricane Andrew, assessments were collected on 1,682,677 bushels. In the 1993–1994 and the 1994–1995 seasons, after the storm, assessments were collected on 228,455 bushels and 283,977 bushels respectively. Lost income from reduced volume and the costs of replanting and maintaining groves, with no immediate monetary return, has caused the industry to seek cost saving measures.

Historically, the June 1 through December 31 period is a time when fruit is plentiful, prices are low, and the overall quality of the crop is good for both domestic and imported supplies. The committee maintains that under these abundant and good quality fruit

conditions, competition and market demand will keep quality standards high.

Conversely, during the time period January 1 through May 31, past seasons have shown that for both domestic and imported fruit, skins are thicker, the juice content is lower and supplies of fruit are limited. Because the temptation to ship poor quality is greater under these high demand and low supply conditions, the committee believes regulations are necessary to prevent poor quality fruit from entering and damaging the lime market. Therefore, the committee believes that for the period June 1, 1997 through December 31, 1997, pack, container, grade and size regulations can be suspended. Competition under good quality and high supply conditions should protect the consumer from poor quality fruit entering market during the deregulated period. The application of regulations from January 1 through May 31 will insure uniform quality throughout the year. The committee will evaluate the impact of this action on the market at the end of the suspension.

Growers, handlers and importers should benefit from the reduced costs of no regulations, such as no inspection fees during the deregulated period. Committee expenses should also be reduced by requiring fewer meetings and less compliance monitoring. Reporting requirements are not affected by this change, and handler reports will continue to be collected during the period of suspension.

Several alternatives to this action were discussed by the committee. One alternative was to leave the regulations in place year-round. This alternative was rejected by the committee because the need to take some action was considered necessary under current market conditions. It was argued that when these regulations were put in place, the quality of both the domestic and imported lime supply varied greatly. Over the years, improved agricultural practices have produced a more consistent, high quality lime supply. This is particularly true during the June through December time period.

Another alternative raised was to terminate the marketing order. Although seriously considered, committee members rejected the idea under arguments that during the January through May time period when supplies are reduced and juice content of all limes is lower, poor quality fruit could enter the market. Consumer dissatisfaction with poor quality limes could lead to product rejection and substitution with lemons, causing lost market share.

This rule represents a compromise of the alternatives considered. The committee believes that this change will provide the consumer with quality fruit throughout the year, while reducing industry costs.

Section 8e of the Act provides that when certain domestically produced commodities, including limes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule changes the regulatory period under the domestic handling regulations, a corresponding change to the import regulations must also be implemented.

Minimum grade and size requirements for limes imported into the United States are currently in effect under Section 944.209 [7 CFR 944.209]. This rule will result in relaxed import requirements because the lime import regulations will not be in effect during the period June 1, 1997, through December 31, 1997. This should reduce costs to importers.

Mexico is the largest exporter of limes to the United States. During the 1994–95 season, Mexico exported 6,075,685 bushels to the United States, while all other sources shipped a combined total of 201,053 bushels during the same time period. The majority of Mexican imports enter the United States between June 1 and December 31, the deregulated period covered in this rule.

A proposed rule concerning this action was published in the May 8, 1996, Federal Register (61 FR 20754), with a 30-day comment period ending June 7, 1996. The comment period was extended to July 8, 1996, through a notice published in the June 26, 1996, Federal Register (61 FR 33047). Eight comments were received. Three comments recommended modifications to the proposed rule, and five comments opposed the proposed rule.

The three comments requesting modification to the proposed rule were submitted by the committee administrator, Gail Knodel, on behalf of the committee. The first comment requested that the proposed rule be modified from a permanent change to a one year trial basis. On April 17, 1996, this recommendation was passed by the committee on a majority vote of seven in support, none against and one abstention. The committee modified its original position because it believes that it is important that this change be thoroughly evaluated before making the suspension on a permanent basis. At the end of the trial year, the committee will evaluate the impact of this action on the industry and determine if continuation is justified.

The second committee comment requested an extension of the comment period. This request was made due to the complexity of the proposed rule and the potential impact of the proposed changes to the industry. A reopening of the comment period was granted by the Department and published in the June 26, 1996, Federal Register (61 FR 33047).

The third committee comment was a request to make the effective date of the rule June 1, 1997. Because the extension of the comment period would delay the effective date of a final rule, making it impossible to begin the period of deregulation effective June 1, 1996, the committee voted to postpone the effective date to allow for a continuous period of deregulation from June 1 to December 31. The committee believes that this will be beneficial for handlers. The committee also believes that this will allow for a more accurate analysis of the impact of the suspension. The recommendation to change the effective date to June 1, 1997, was made by unanimous vote of the committee. This rule has been modified to reflect the committee's recommendations.

The five opposing comments were submitted by Steve Biondo, grower; Gregory P. Nelson, president of Bernard Egan & Company, grower/importer; Barney W. Rutzke, president of Barney W. Rutzke, Inc., grower/handler; Tina Marie Rutzke, operations manager of Florida Brands Inc., grower/handler; and the fifth was jointly submitted by Herbert Yamamura, president of LIMECO, Inc., grower/handler; Joe Guggino, registered agent for Primo Groves, Inc., grower; Richard Takeshita, grower; Edna Batho, grower; Elizabeth Harrill, grower; Robert Yamamura, grower; Donald Strock, grower; and April Yamamura, grower.

All of the opposing comments expressed concerns that loss of regulation and the associated quality standards will result in poor quality limes on the market and consumer dissatisfaction. Ms. Rutzke states that the loss of regulations will lead to consumer rejection of limes and the substitution of lemons, causing a loss of overall market share. Both the comment of Mr. Rutzke and the jointly signed comment expressed concerns that low quality imported limes will be dumped on the domestic market.

The committee, upon further discussion, shared these concerns, and therefore recommended that the proposed rule be modified from a permanent change to a one year trial basis. The committee believes that there

is an adequate supply of high quality limes to meet consumer demands during the requested deregulation period. However, the committee also believes that a test of the deregulation period will determine if consumer demand will keep quality high or result in substitution of lemons and loss of market share.

Four of the opposing comments allege that the proposed rule was passed by a committee with unqualified members seated, and therefore the proposal should not have been acted on by the Department. Commenters claim that, when the original recommendation was made on December 13, 1995, some members were serving in positions that they were not qualified to hold. However, since that time, a new committee has been seated. At its organizational meeting on April 17, 1996, the newly elected members of the committee took up the discussion of the suspension. The new committee voted to recommend that the proposed rule be modified from a permanent change to a one year trial basis. Consequently, the changes provided for in this rule were affirmed by the current committee with a majority vote of seven in support, none opposed, and one abstention.

The jointly signed comment disagreed with the proposed rule's contention that, historically, the June 1 through December 31 period is a time when fruit prices are low, and the overall quality of the crop is good. They argued that prices in June, September, October, November and December often have differed from year to year, between low to moderately high, and that lime prices in 1993 and 1994 remained moderate during the months of July and August.

In terms of quality, they state that during the June through December time period, quality is not considered high quality. For example, they state there is a relatively large amount of stylar-end breakdown, which is a weakening of the rind at the fruit's blossom end which deteriorates over time. In its deliberations of this rule, the committee considered the availability of quality fruit during the proposed period of suspension. The proposed rule noted that historically prices are low, and the overall quality of the crop is good, indicating a trend and general view of the time period. This does not mean to imply that fluctuations do not occur during various months within the period or from year to year. However, during the period from June to December, juice content improves, fruit matures, and the overall quality of limes is better. The committee plans to review the effects of the suspension on the market, and base further action on its analysis.

After thoroughly analyzing the comments received and other available information, the Department has concluded that this final rule is appropriate.

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, including the information and recommendations submitted by the committee and other available information, it is hereby found that the provisions of the regulations to be suspended, as hereinafter set forth, no longer tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 911

Limes, Marketing agreements, 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 in the preamble, 7 CFR parts 911 and 944 are amended as follows:

1. The authority citation for 7 CFR parts 911 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 911—LIMES GROWN IN FLORIDA

§§ 911.311, 911.329, 911.344 [Amended]

2. Effective June 1, 1997, through December 31, 1997, §§ 911.311, 911.329, and 911.344 are suspended.

PART 944—FRUITS; IMPORT REGULATIONS

§ 944.209 [Amended]

3. Effective June 1, 1997, through December 31, 1997, § 944.209 is suspended.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–21210 Filed 8–20–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 947

[Docket No. FV96–947–1 FIR]

Oregon-California Potatoes; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with an addition, the provisions of an interim final rule that established an assessment rate for the Oregon-California Potato Committee (Committee) under Marketing Order No. 947 for the 1967–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in Oregon-California. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: Effective on July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, FAX 202–720–5698, or Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, 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, P.O. 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 No. 114 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Oregon-California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The 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, Oregon-California potato 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 potatoes beginning July 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 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 (FRA), 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 550 producers of Oregon-California potatoes in the production area and approximately 40 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 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 Oregon-California potato producers and handlers may be classified as small entities.

The Oregon-California potato 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 and handlers of Oregon-California potatoes. 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 March 28, 1996, and unanimously recommended 1996–97 expenditures of $61,200 and an assessment rate of $0.005 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were $46,200. The assessment rate of $0.005 is $0.001 less than last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year include $30,000 for an agreement with the Oregon Potato Commission to provide services to the Committee and $8,100 for a contingency fund. Budgeted expenses for these items in 1995–96 were $24,000 and $100, respectively. The contingency fund was increased as the Committee is considering a possible marketing research and development project in conjunction with the Oregon Potato Commission.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Oregon-California potatoes. Potato shipments for the year are estimated at 7,400,000 hundredweight which should provide $37,000 in assessment income. Income derived from handler assessments, along with 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 31, 1996, issue of the Federal Register (61 FR 27247). That interim final rule added a new subpart heading—Assessment Rates and § 947.247 to establish an assessment rate for the Committee. That rule provided that interested persons could file comments through July 1, 1996. No comments were received.

This action will reduce the assessment obligation imposed on handlers. 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 from 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 thee meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget 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 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.

This final rule also adds a new subpart heading—Handling Regulations to the Code of Federal Regulations immediately preceding § 947.340 Handling regulation.

Pursuant to 5 U.S.C. 553, it is also found and determined 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 Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period began on July 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes 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, and no comments were received.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 947 which was published at 61 FR 27247 on May 31, 1996, is adopted as a final rule with the following change:

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

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

Authority: 7 U.S.C. 601–674.

PART 947—[AMENDED]

2. Part 947 is amended by adding a new subpart heading immediately preceding § 947.340 to read as follows:

Note: This subpart heading will appear in the Code of Federal Regulations.

Subpart—Handling Regulations

Dated: August 8, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–20662 Filed 8–20–96; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 953

[Docket No. FV96–953–1 FIR]

Southeastern Potatoes; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with an addition, the provisions of an interim final rule that established an assessment rate for the Southeastern Potato Committee (Committee) under Marketing Order No. 953 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in two southeastern States (Virginia and North Carolina). Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on June 1, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, FAX 202–720–5698. 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, DC 20090–6456, telephone 202–720–2491, FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 104 and Order No. 953, both as amended (7 CFR part 953, regulating the handling of Irish potatoes grown in two southeastern States (Virginia and North Carolina), 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.''

The 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, Virginia-North Carolina potato 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 potatoes 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 of 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 150 producers of Southeastern potatoes in the production area and approximately 60 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 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 Southeastern potato producers and handlers may be classified as small entities.

The Southeastern potato 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 and handlers of Southeastern potatoes. 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 April 18, 1996, and unanimously recommended 1996–97 expenditures of $12,000, the same as last year, and an assessment rate of $0.0075 per hundredweight. The assessment rate of $0.0075 is $0.0025 higher than last year's established rate. The major expenditures include $7,800 for the manager's and secretarial salaries and $900 for travel expenses.

The assessment rate recommended by the Committee was based on last year's shipments of 1,549,268 hundredweight of Southeastern potatoes, which should provide $11,619,51 in assessment income. Income derived from handler assessments, along with 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 31, 1996, issue of the Federal Register (61 FR 27248). That interim final rule added a new subpart heading—Assessment Rates and § 953.253 to establish an assessment rate for the Committee. That rule provided that interested persons could file comments through July 1, 1996. 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 rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget 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 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.

This final rule also adds a new subpart heading—Handling Regulations to the Code of Federal Regulations immediately preceding § 953.322 Handling regulation.

Pursuant to 5 U.S.C. 553, it is also found and determined 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 Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period began on June 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes 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, and no comments were received.

List of Subjects in 7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 953 which was published at 61 FR 27248 on May 31, 1996, is adopted as a final rule with the following change:

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

1. The authority citation for 7 CFR part 953 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 953—[ADDED]

2. Part 953 is amended by adding a new subpart heading immediately preceding § 953.322 to read as follows:

Note: This subpart heading will appear in the Code of Federal Regulations.

Subpart—Handling Regulations

Dated: August 8, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–20661 Filed 8–20–96; 8:45 am]

BILLING CODE 3410–02–P–M

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1980

RIN 0575–AB29

Future Recovery of Losses Paid on Liquidated Guaranteed Loans

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Agency is amending its guaranteed farm credit program regulations to establish new policies and procedures on the release of guaranteed loan borrowers and cosigners from liability. This action will define guaranteed lenders' release authorities and standardize procedures for reporting post loss claim collection results to the Agency. The intended effect is to maximize collections from unsatisfied guaranteed accounts and to minimize the financial loss to the Government.

EFFECTIVE DATE: September 20, 1996.

FOR FURTHER INFORMATION CONTACT: Phillip Elder, Senior Loan Officer, Farm Service Agency (FSA), Farm Credit Programs Loan Servicing Division, U.S. Department of Agriculture, P.O. Box 2415, Ag Box Code 0523, Washington, D.C. 20013–2415, or at (202) 720–9053.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been reviewed under E.O. 12866 and has been determined to be a significant regulatory action.

Executive Order 12372

1. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, Farm Ownership Loans, Farm Operating Loans, and Emergency Loans are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with state and local officials.

2. The Soil and Water Loan Program is subject to and has met the provisions of E.O. 12372 and FmHA Instruction 1940–J.

Federal Assistance Program

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

10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, ''Environmental Program.'' It is the determination of the issuing agencies that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub.L. 91–190, an Environmental Impact Statement is not required.

Executive Order 12778

This final rule has been reviewed in accordance with E.O. 12778, Civil

Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), a notice and request for comments (61 FR 11183, March 19, 1996) was published announcing the Agency's request for an addendum to an approved information collection for the farm credit programs guaranteed loan regulations required by the amendments to 7 CFR part 1980 set forth in this rule. No comments were received. The existing information collection requirements were previously approved by OMB under the provisions of 44 U.S.C. 35 and assigned OMB control number 0575–0079, which was later renumbered 0560–0155. A revised information collection submission will be submitted to OMB for their approval.

Unfunded Mandates

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

Discussion of Final Rule

This final rule establishes standardized procedures for following up with lenders for future collections on loans that resulted in a loss to the Government. These policy changes will strengthen Agency regulations on monitoring loan accounts and will maximize recoveries on liquidated accounts. The proposed rule was published on May 5, 1994, (59 FR 23173–74) with a comment period ending July 5, 1994.

This change is being made in response to recommendations from the USDA, Office of Inspector General (OIG). OIG found that the Farmers Home Administration (FmHA) had no procedures to monitor subsequent recoveries by lenders from defaulted guaranteed loan borrowers (OIG Audit Number 04099–118–Te, June 11, 1987). The audit recommendations involved guaranteed farmer programs loans of FmHA. The FmHA Farmer Programs loans are now administered as Farm Credit Programs by FSA. The other guaranteed loan programs of FmHA are now administered by various agencies. Water and Waste disposal facility loans are administered by the Rural Utilities Service (RUS), Housing and Community Programs loans are administered by the Rural Housing Service (RHS) and Business and Industrial loans and Nonprofit National Corporations loans are administered by the Rural Business-Cooperative Service (RBS). This reorganization was authorized by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354). The proposed rule contained changes to 7 CFR part 1980 subpart A, in addition to subpart B. Since USDA has been reorganized, the rule has been revised to delete the proposed changes to subpart A. FSA, RUS, RHS, and RBS are jointly issuing this rule due to joint ownership of chapter XVIII, title 7, Code of Federal Regulations, although FSA will be affected only. RUS, RHS, and RBS are in the process of revising the regulations for their respective agencies.

Five comment letters were received by the close of business on July 5, 1994. Comments were received from several groups representing the farming and lending community, including a State Commissioner of Agriculture, FSA employees, the American Bankers Association and the Farm Credit Council.

One commenter suggested that the reporting requirements would place additional burdens upon the County Office and that the FSA St. Louis KCMO Finance Office (formerly FmHA National Finance Office) has the capability to generate these reports. However, the County Office is currently required to follow up with lenders for a 5-year period. This regulation simply provides a specific method of reporting. Requiring the County Supervisor to perform the follow-up contact assures that a response will be provided and direct contact is assured. This commenter also stated that the regulation should address what happens after the 3-year period of follow-up with the lender is completed. Consequently, the Agency has clarified the rule. Also, the Agency plans to use internal Administrative directives and instructions to address additional issues concerning actions after the 3-year follow-up is complete.

One commenter was concerned about the additional reporting burden that this rule will place on lenders. However, the regulation simply provides for a standardized method of reporting; information lenders are already responsible for gathering. Lenders are currently required to monitor liquidated guaranteed loan accounts for a 5-year period. This regulation simply provides a format for reporting their findings, where none existed previously. The internal use forms are not published, but are available for public viewing by contacting the FSA Management Services Division, Information Management Branch, PO Box 2415, Washington, D.C. 20013–2415.

A commenter suggested that ''Adequate Compensation/Consideration'' in the proposed rule be removed and replaced with a reference to FmHA Instruction 1956–B, ''Debt Settlement—Farmer Programs and Housing.'' This same commenter stated that the Agency would save a considerable amount of cost and time if the borrower was encouraged to apply for debt settlement at the time the loss claim is submitted. FmHA Instruction 1956–B applies to debts owed the Federal Government for certain USDA loan programs. However, under a Loan Note Guarantee or Contract of Guarantee, the debt is owed to the lender and guaranteed debts are settled by the lender. FSA as guarantor only reviews information provided by the lender to determine whether or not a release request will be concurred with. FSA, in its role as loan guarantor, does not work directly with the borrower. After a loss claim is paid, the Government does not become a creditor of the farmer or rancher. If the debt is not released, the lender has the responsibility to follow up with the borrower after a loss claim is paid and remit the correct percentage back to the Government in accordance with their guarantee. Success with recoveries after liquidation and findings of OIG audits discourage a simultaneous loss claim payment, settlement and release. Therefore, this suggestion was not adopted.

Another commenter noted that the proposed rule stated in part ''A lender may, with FmHA's concurrence, release a borrower and/or cosigner from liability only when adequate compensation/consideration is received.'' This commenter recommended that this statement be changed to the following: ''A lender may, with FSA's concurrence, release a borrower or cosigner from liability only when adequate compensation is received or it is mutually agreed that there is very little probability of recovery from the borrower or cosigner.'' We have adopted this comment in the final rule. This same commenter stated that the intended effect of the proposed rule is a positive move to minimize losses incurred by

FSA and ensure lenders continue collection efforts on those loans in which the borrower has not been released from liability.

Another interested party commented that the annual audit rules are an expense and a burden to them. This respondent indicated a desire for removal of all loss claim follow-up requirements from guaranteed loan regulations. The Agency has determined that current requirements will be reduced by this rule and the requirements of this rule are justified by the benefits of program participation.

As discussed above, administrative procedures in the proposed rule will be included in internal Agency instructions. Also, as part of this final rule, the agencies are removing some administrative provisions from the Federal Register and are changing references from ''FmHA or its successor agency under Public Law 103–354'' to ''the Agency.'' Other minor wording changes are also being made.

List of Subjects in 7 CFR Part 1980

Administrative practice and procedures, Agriculture, Business and Industry, Community Facilities, credit, Loan programs—Agriculture, Loan Programs—Business and industry, Loan programs—Housing and community development, low and moderate income housing, reporting and recordkeeping requirements, rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Subpart B—Farmer Programs Loans

2. Section 1980.146 is amended by:

a. removing the words ''FmHA or its successor agency under Public Law 103–354'' wherever it appears in paragraphs (e)(2)(iv)(B) and (e)(4) and adding the words ''the Agency'' in its place;

b. removing the words ''FmHA or its successor agency under Public Law 103–354'' in the title, second sentence, and the last place it appears in the last sentence of paragraph (e)(5) and adding the words ''the Agency'' in its place;

c. removing the words ''Form FmHA or its successor agency under Public Law 103–354'' in the first place it appears in the last sentence of paragraph (e)(5) and adding the words ''Form FmHA'' in its place;

d. removing the words ''FmHA or its successor agency under Public Law 103–354'' wherever it appears in paragraphs (e)(7) and (e)(8) and adding the words ''the Agency'' in its place; and

e. revising paragraphs (e)(2)(iv)(A) and (e)(3) to read as follows:

§ 1980.146 Liquidation.

* * * * *

(e) * * *

(2) * * *

(iv) * * *

(A) If the loss is greater than the estimated loss, the Agency will pay the additional amount owed to the lender.

(B) * * *

(3) *Future Recovery.* The lender will remit any future recoveries to the Agency in proportion to the percentage of guarantee in accordance with the Lender's Agreement until the account is paid in full or otherwise satisfied. A lender may, with Agency concurrence, release a borrower or cosigner from liability when adequate compensation is received or it is mutually agreed that there is very little probability of future recovery from the borrower or cosigner.

* * * * *

§ 1980.174 [Removed and Reserved.]

3. In part 1980 § 1980.147 is removed and reserved.

Signed in Washington, DC, on August 12, 1996.

Eugene Moos,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 96–21236 Filed 8–20–96; 8:45 am]

BILLING CODE 3410–05–P

Food Safety and Inspection Service

9 CFR Parts 304, 308, 310, 320, 327, 381, 416, and 417

[Docket No. 93–016–3N]

Pathogen Reduction/HACCP National Implementation Conference

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is holding a conference, ''Pathogen Reduction/HACCP National Implementation Conference,'' from September 30 through October 3, 1996. The purpose of the conference is to brief the public on the content of the final rule, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems,'' published on July 25, 1996, and discuss implementation.

DATES: The conference will be held from 1:00 p.m. until 5:00 p.m. on September 30, 1996; 8:30 a.m. until 5:00 p.m., on October 1–2, 1996; and 8:30 a.m. until Noon on October 3, 1996.

ADDRESSES: The conference will be held at the U.S. Department of Agriculture, 1400 Independence Avenue, SW., Back of the South Building Cafeteria (between the 2nd and 3rd Wings). Send suggestions for additional topics related to implementation to: FSIS Docket Clerk, DOCKET #93–016–3N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 4352, 1400 Independence Avenue, S.W., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: To register for the conference, call (800) 485–4429, FAX (202) 501–7642, or E-mail usdafsis/s=confer@mhs.attmail.com.

SUPPLEMENTARY INFORMATION: On July 25, 1996, FSIS published a final rule, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems'' (61 FR 38805). This rule introduced sweeping changes to the meat and poultry inspection system. In the preamble to the final rule, FSIS announced that an implementation conference would be held in Washington, DC, about 60 days after publication of this final rule (61 FR 38813). That meeting, ''Pathogen Reduction/HACCP National Implementation Conference,'' will be held from September 30 through October 3, 1996.

At the implementation conference the following topics will be discussed: (1) Status of FSIS efforts to develop generic model HACCP plans and conduct small establishment HACCP demonstration projects; (2) the draft guidance materials published as Appendices; (3) the HACCP implementation schedule and certain technical aspects of the regulations promulgated in the final rule; (4) other implementation issues identified by the public; (5) methods to achieve the goal of consistent training for FSIS and industry employees; and (6) due process and enforcement issues.

FSIS welcomes suggestions of additional implementation topics. Send suggestions to the FSIS Docket Clerk (See **ADDRESSES**). Also, transcripts of the conference will be available in the FSIS Docket Room.

Done at Washington, DC, on: August 16, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–21347 Filed 8–16–96; 2:52 pm]

BILLING CODE 3410–DM–P

9 CFR Parts 304, 308, 310, 320, 327, 381, 416, and 417

[Docket No. 93–016–2N]

Technical Conference Regarding E. coli Verification Testing

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is holding a conference, ''Technical Conference Regarding *E. coli* Verification Testing,'' on September 12–13, 1996. The conference will address scientific and technical issues related to the *E. coli* verification testing required by FSIS's final rule, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems,'' published on July 25, 1996.

DATES: The conference will be held from 8:30 a.m. to 5:00 p.m. on September 12 and from 8:30 a.m. until Noon on September 13, 1996.

ADDRESSES: The two-day conference will be held at the U.S. Department of Agriculture, 1400 Independence Avenue, SW, Back of the South Building Cafeteria (between the 2nd and 3rd Wings). Submit one original and two copies of written comments to: FSIS Docket Clerk, DOCKET #93–016F, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 4352, 1400 Independence Avenue, S.W., Washington, DC 20250–3700. All comments submitted on this rule will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 1:00 p.m., and 2:00 p.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: To register for the conference, or to arrange to present technical data, contact Betsy Kogan, at (800) 485–4429 or E-mail usdafsis/s=confer@mhs.attmail.com.

SUPPLEMENTARY INFORMATION: On July 25, 1996, FSIS published a final rule, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems'' (61 FR 38805). This rule introduced sweeping changes to the meat and poultry inspection system. Among other things, the rule requires all slaughter establishments to test for *E. coli* at a frequency based on production volume to verify that they are meeting the established performance criteria.

In the preamble to the final rule (pp. 38844–38846), FSIS solicited comments and information on a number of technical issues concerning the protocols for *E. coli* testing. FSIS also announced that a public conference would be held to discuss such issues. The first conference, ''Technical Conference Regarding *E. coli* Verification Testing'' has been scheduled for September 12–13, 1996. This conference, led by a panel of Government scientists, will provide interested parties the opportunity to present technical data, information, and views related to the *E. coli* testing requirements.

At the conference, FSIS officials will present a brief overview of the *E. coli* testing program. FSIS invites interested parties to make presentations addressing the following:

Are there alternative, equally or more effective risk-based microbial sampling protocols that could be used for process control verification by establishments that slaughter cattle or swine?

Are there more appropriate anatomical sites for microbial testing than those adopted?

Are there alternative sampling frequencies that would elicit results more indicative of process control performance?

How could the proposed testing protocol be revised to better account for differing establishment characteristics and how can FSIS minimize the cost to establishments of *E. coli* testing without sacrificing testing effectiveness?

Are there worker safety concerns regarding sampling from difficult to reach carcass sites and, if so, how might they be mitigated?

Given that testing is based on production volume, are there effective approaches other than requiring very small establishments to conduct a minimal amount of testing during certain months of the year?

Persons wishing to make presentations should contact Betsy Kogan (see **FOR FURTHER INFORMATION CONTACT**), to advise her of the nature of the presentation. Transcripts of the conference will be available in the FSIS Docket Room (See **ADDRESSES**).

Also, interested parties are reminded that written comments will be received on or before September 23, 1996, on the scientific and technical issues associated with *E. coli* testing. Comments should be sent to the FSIS Docket Room (See **ADDRESSES**).

Done at Washington, DC, on: August 16, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–21346 Filed 8–16–96; 2:52 pm]

BILLING CODE 3410–DM–P

9 CFR Parts 304, 308, 310, 320, 327, 381, 416, and 417

[Docket No. 93–016–1N]

Schedule of FSIS Public Meetings Regarding the Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems Final Rule

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Announcement of public meetings.

SUMMARY: The Food Safety and Inspection Service (FSIS) announces a series of public meetings to discuss specific aspects of the final rule, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems,'' published on July 25, 1996. These meetings are intended to assist in the understanding and implementation of the final rule. The public is invited to comment on the schedule, including conflicts. Some dates may be changed to ensure the meetings will accomplish their intended purposes.

DATES: See **SUPPLEMENTARY INFORMATION** for dates of the meetings.

ADDRESSES: Submit one original and two copies of written comments to: FSIS Docket Clerk, DOCKET #93–016F, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 4352, 1400 Independence Avenue, SW., Washington, DC 20250–3700. All comments submitted on this rule will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 1:00 p.m., and 2:00 p.m. and 4:30 p.m., Monday through Friday. See **SUPPLEMENTARY INFORMATION** for location of the meetings.

FOR FURTHER INFORMATION CONTACT: Charles Danner, Director, Planning Staff, (202) 501–7138, with any questions about the meeting schedule. To register for the meetings, call (800) 485–4429, FAX (202) 501–7642, or E-mail usdafsis/s=confer@mhs.attmail.com.

SUPPLEMENTARY INFORMATION: On July 25, 1996, FSIS published a final rule, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems'' (61 FR 38805). This rule introduced sweeping changes to the meat and poultry inspection system.

As announced in the final rule, FSIS is holding meetings to address the implementation of the rule and to discuss specific scientific and technical aspects of the rule.

FSIS also will hold additional meetings on issues related to the final rule. The Agency will hold a ''Public Hearing on Criteria for Equivalence of Foreign Inspection Systems.'' This

meeting will provide interested parties the opportunity to present viewpoints that will inform FSIS' decisionmaking for determining the equivalence of foreign meat and poultry inspection systems to the U.S. inspection system.

FSIS will hold a conference, ''Federal/State Conference on Food Safety.'' This conference will focus on how FSIS and State agencies can effectively allocate resources at the Federal, State, and local levels of governments to improve food safety.

Also, the Agency is in the initial planning phases to develop a national food safety symposium to continue the dialogue on animal production food safety issues, research needs, and farm-to-slaughter strategies.

The list of meetings follows:

Meeting	Location	Date
E. coli Verification Testing Conference	Washington, DC	Sept. 12–13, 1996.
National Implementation Conference	Washington, DC	Sept. 30 through Oct. 3, 1996.
International Meeting on Implementation	Washington, DC	Oct. 8, 1996.
Public Hearing on Criteria for Equivalence of Foreign Inspection Systems	Washington, DC	Oct. 9–10, 1996.
Public Meeting on HACCP-based Inspection Models (Pilots)	Washington, DC	To Be Announced.
Meeting with State Directors of Meat and Poultry Inspection Programs	Washington, DC	Oct. 29, 1996.
Federal/State Conference on Food Safety	Washington, DC	Oct. 30, 1996.
Demonstration Projects for Small Plants	Washington, DC	Oct. 31, 1996.
Regional Implementation Conferences	Chicago	Oct. 15, 1996.
	Kansas City	Oct. 17, 1996.
	Dallas	Oct. 22, 1996.
	Oakland	Oct. 24, 1996.
	Boston	Nov. 7, 1996.
	Atlanta	Nov. 13, 1996.
Joint FSIS/FDA Conference Time and Temperature	Washington, DC	Nov. 18–20, 1996.
Second *E. coli* Conference	Washington, DC	Apr. 1997.
Salmonella Conference	Washington, DC	To Be Announced.

Information on each conference will be included in separate notices in the Federal Register. FSIS will try to adhere to the above schedule; any changes will be indicated in the Federal Register notice pertaining to that meeting.

Done at Washington, DC, on: August 16, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–21345 Filed 8–16–96; 2:52 pm]

BILLING CODE 3410–DM–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 932 and 941

[No. 96–56]

Federal Home Loan Bank Directors' Compensation and Expenses

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation on the compensation of Federal Home Loan Bank (Bank) directors. The existing Finance Board regulation on the compensation of Bank directors subjects the payment of fees and expenses to limits set by the Finance Board. Those limits and other criteria are contained in the Finance Board's Directors' Fees and Allowances Policy (Policy), which essentially imposes a uniform directors' compensation structure on all Banks. The final rule, in conjunction with the repeal of the Policy, permits each Bank, within certain standards of reasonableness set forth in the regulation, to implement its own policy on director compensation beginning in 1997 and allows each Bank to pay its directors for such expenses as are payable by the Bank to its senior officers, effective immediately.

The amended regulation also codifies an important provision of the Finance Board's Policy, which will be rescinded in its entirety as of the end of 1996, requiring that meetings of a Bank's board of directors be held within the United States.

Finally, the final rule amends a provision of the Finance Board's regulation governing the compensation and expenses of the private citizen member of the board of directors of the Office of Finance (OF) to cross-reference the amended regulation on the compensation of Bank directors, instead of the Policy.

EFFECTIVE DATE: September 20, 1996.

FOR FURTHER INFORMATION CONTACT: Patricia L. Sweeney, Program Analyst, District Banks Secretariat, (202) 408–2872; or Eric M. Raudenbush, Attorney-Advisor, Office of General Counsel, (202) 408–2932; Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Subsection 7(i) of the Federal Home Loan Bank Act (Bank Act) permits each Bank, with the approval of the Finance Board, to pay its directors reasonable compensation and necessary expenses for the time required of them in the performance of their Bank-related duties, in accordance with resolutions adopted by such directors. 12 U.S.C. 1427(i) (1994). A general provision on Bank directors' compensation, which appears at § 932.27 of the Finance Board's regulations, provides merely that directors' fees shall be established by each Bank within limits set by the Finance Board. See 12 CFR 932.27 (1995).

The Finance Board has exercised its statutory responsibility to approve Bank director compensation and expenses largely through the Policy, adopted by resolution of its Board of Directors on February 23, 1993. *See* Finance Board Resolution No. 93–12 (Feb. 23, 1993). The Policy establishes a maximum fee of $1,200 per day payable to the Chair of a Bank's board of directors when presiding over meetings of the board or its executive committee, and a maximum fee of $650 per day payable to all other directors for attendance at board, committee, or other meetings for which a fee is authorized. Under the Policy, daily meeting fees are the only authorized source of compensation for Bank directors; the Policy does not provide for payment of either a retainer, or non-cash benefits to directors. The Policy also sets forth generally the categories of expenses that are payable to Bank directors and identifies several specific expense items the payment of

which is either authorized or prohibited.

The Banks first became subject to a formal policy on directors fees and expenses in 1974, when the former Federal Home Loan Bank Board (FHLBB) (the Finance Board's predecessor agency) adopted a policy that revised, clarified and incorporated the various resolutions, minute entries and interpretations on director compensation and expenses that had been issued by the FHLBB since its creation in 1932. The FHLBB policy was amended several times, lastly in 1986, when the current dual $1200/$650 per day meeting fee caps were incorporated. When the Finance Board succeeded the FHLBB as regulator of the Bank system in 1989, the FHLBB's policy on Bank directors' fees and expenses remained in effect, as provided by the Financial Institutions Reform Recovery and Enforcement Act's (FIRREA) provision on the continuation of orders, resolutions, determinations and regulations of the FHLBB. See Pub. L. No. 101–73, section 401(h), 103 Stat. 183 (1989) (codified at 12 U.S.C. 1437 note). The Policy is essentially identical to the FHLBB's 1986 policy.

The Bank Act currently vests in the Finance Board the responsibility to supervise the Bank System, to regulate it for financial safety and soundness, and to pass upon most matters of corporate governance of the Banks. A series of studies and reports mandated by the Housing and Community Development Act of 1992, Pub. L. No. 102–550, section 1393, 106 Stat. 3672 (1992), including a report prepared by the Finance Board in April 1993, concluded that the Finance Board's authority over Bank corporate governance is in conflict with the agency's primary role as Bank system regulator. Since the completion of these studies, the Finance Board has been working closely with the Banks to implement regulatory and policy changes designed to devolve to the Banks the authority to set policy on matters of corporate governance, to the extent permissible under the Bank Act. In conjunction with these efforts, two separate task forces composed of senior officials of the Banks have recommended that the Finance Board rescind the Policy and establish broad guidelines within which the Banks' boards of directors can set the structure and limits for the compensation of their directors.

In conformity with these recommendations and as part of its policy to devolve matters of corporate governance to the Banks, the Finance Board published in the Federal Register on April 22, 1996 a proposal to replace its existing regulation on Bank directors' compensation and the Policy adopted thereunder with a comprehensive regulation on Compensation and Expenses of Bank Directors, intended to allow the Banks greater freedom to develop and implement their own directors' compensation plans, while establishing clear and enforceable regulatory limitations. See 61 FR 17603 (1996). The Finance Board received six comment letters, all of which were from FHLBanks. While some commenters objected to particular provisions of the proposed rule, all believed that it was an improvement over the existing regulatory/policy scheme.

II. Analysis of the Final Rule and Public Comments on the Proposed Rule

The final rule provides for the addition of a new section 932.26 to the Finance Board's regulations and for the revision of sections 932.27 and 941.7(f)(2) thereof to contain entirely new text.

Section 932.26 is adopted as proposed. This section codifies a provision of the Policy requiring that meetings of a Bank's board of directors and its committees usually should be held within the district served by that Bank and prohibiting Banks from holding any such meetings outside the borders of the United States.

Amended section 932.27, entitled ''Compensation and Expenses of Bank Directors,'' is intended to limit the total dollar pool available to each Bank to compensate its directors to an appropriate level, while providing the Banks with maximum flexibility to devise their own directors' compensation schemes within the dollar limit. The regulation is not designed to answer specific compensation issues; rather, it is intended to empower each Bank to exercise its reasonable discretion to decide how to compensate its directors, and thereby to allow many practices that are not explicitly authorized under the Policy, including, without limitation: the payment of retainer fees, the provision of non-cash benefits and the payment of meeting fees for participation in telephonic meetings.

Paragraph (a) of new section 932.27 defines three terms—''compensation,'' ''average compensation per director'' and ''maximum compensation.'' The latter definition did not appear in the proposed rule and was added for the reasons discussed below.

Paragraph (b) of new section 932.27 is the operative provision with respect to the compensation of directors. It requires each Bank to adopt annually, by resolution of its board of directors, a written policy to provide for the payment of ''reasonable compensation'' to its directors for their work on Bank-related matters. In conjunction with the definition of ''Compensation'' contained in paragraph (a), paragraph (b) is intended to permit the Banks to remunerate their directors in a wide variety of fashions, including through the use of daily meeting fees, retainer fees, cash or non-cash fringe benefits, deferred payments, incentive payments, or combinations thereof. Because the timetable for transition from the Policy to the new regulatory scheme was unclear under the proposed rule, the final rule specifically provides that the Banks' policies on director compensation shall take effect beginning in 1997. Bank directors will continue to be compensated in the manner prescribed in the Policy until December 31, 1996, at which time the Finance Board intends to rescind the Policy in its entirety.

Under paragraph (b), which is otherwise identical to that set forth in the proposed rule, the text of each Bank's policy must detail the types of Bank-related meetings or other activities in which its directors are required or expected to participate and for which they may be compensated. In addition, the policy must explain fully the methodology for determining the amounts and the circumstances under which the Bank's directors may be paid, including, if applicable: setting forth rates of compensation for participation in Bank-related activities; setting forth any retainer fees payable to directors and the circumstances under which they may be paid; explaining the rationale for any graduated meeting or retainer fee scales; and detailing any non-cash fringe benefits to be provided to directors, including the approximate cash value thereof.

Paragraph (c) of new section 932.27 sets forth the substantive limits on Bank directors' compensation that must be reflected in each Bank's policy on director compensation. The introductory text to paragraph (c)(1) provides for a $28,000 cap on each Bank's annual ''average compensation per director'' (ACPD). ACPD is defined in paragraph (a) as the sum of the maximum compensation for all directors serving on a Bank's board of directors, divided by the total number of directors serving on that Bank's board. In turn, the term ''maximum compensation'' is defined in paragraph (a) as the maximum total compensation that would be paid to a director in a given year under the Bank's policy on director compensation if that director

attended all meetings and fulfilled all duties assigned to or otherwise expected of him or her for that year. The definition of ''maximum compensation'' has been added to the final rule and the term has been incorporated into the definition of ACPD, in part, to make clear that ACPD refers to the maximum amount of compensation that directors have the potential to earn if they fulfill all duties for which they may be compensated, including without limitation, attendance at meetings and service as board or committee chairs or vice-chairs.

By capping the ACPD, new section 932.27 effectively limits the total pool of money available to each Bank to compensate its directors (to $28,000 times the total number of directors), but, because each Bank has a different number of directors, this has been expressed in terms of ''compensation per director'' instead of as a lump sum. Because the regulation caps only the average amount that may be paid to a Bank's directors, a Bank policy may be structured so that one or more directors could earn more than $28,000 in a year, as long as the average maximum compensation of all of the Bank's directors do not exceed that amount.

Two of the commenters specifically opposed the inclusion in the regulation of any dollar cap on director compensation. One expressed a belief that placing an ''artificial limit'' on compensation will cause all Banks' compensation of directors to rise to the maximum level regardless of other relevant factors and both opined that each board should be free to set its own compensation levels based upon the services performed by each director and compensation practices at comparable institutions (taking into account the FHLBanks' status as government-sponsored enterprises), subject to regulatory parameters based on safety and soundness considerations.

After considering the agency's statutory responsibility to ''approve'' Bank directors' compensation, see 12 U.S.C. 1427(i), the Bank Act's requirement that such compensation be ''reasonable,'' see id., and the preference for providing a clear regulatory standard, the Finance Board has concluded that a dollar cap on compensation is necessary and appropriate. Specifically, the Finance Board has concluded that an ACPD cap of $28,000 is sufficient to allow the Banks to attract high quality individuals to serve on their boards of directors, yet is moderate enough, considering market rates, the Banks' GSE status and the general duties of Bank directors, to qualify as ''reasonable compensation'' under the Bank Act.

As provided in paragraph (c)(2) of new section 932.27, the cap on ACPD will increase automatically, beginning in 1998, to reflect the previous year's change in the Consumer Price Index (CPI). The proposed rule provided for the adjustment to occur beginning in 1997, but because the regulation was changed in the final rule to provide that the Banks' policies will take effect beginning in 1997 instead of 1996, the timetable for CPI adjustment was also moved back by one year.

Paragraph (c)(1)(i) of new section 932.27 requires that, keeping within the stated cap on ACPD, each Bank's policy on director compensation should be designed such that, the actual compensation paid to each director in a given year reflects both the amount of time that the director has spent on Bank-related business and the level of responsibility the director has assumed with respect to his or her role on the Bank's board of directors during that year. This paragraph has been expanded in the final rule to make clear that each Bank's policy must in some way ensure that a director's failure to attend meetings or to fulfill other assigned duties has a tangible negative effect on the actual compensation paid to that director. Specifically, the requirement that a directors' annual compensation must reflect the amount of time spent on official Bank business is intended to ensure that Bank directors are being paid for meetings they actually attend and duties they actually perform for each Bank.

As proposed, paragraph (c)(1)(ii) would have required each Bank to pay its Chair: (1) More than any other director and (2) at least 125 percent of the Bank's ACPD. In the final rule, this provision has been modified slightly to require only that the ''maximum compensation'' that can be paid to the chair in a given year if he or she fulfills all of his or her duties—as opposed to the actual amount paid to the chair—conform to the requirements set forth in the paragraph. This change was made because, as noted by one commenter, under the proposed rule, compliance with the requirement that the chair earn at least 125 percent of the ACPD for that Bank could have created an apparent conflict with paragraph (c)(1)(i) if a Bank's chair has unexpectedly low meeting attendance during a given year. The change is intended to clarify that each Bank's policy should be structured so that, assuming the chair fulfills all of his or her duties, he or she will be paid more than any other director and will earn at least 125 percent of the ACPD. If, in fact, the chair does not fulfill all of his or her duties in a given year and this causes him or her to receive less than another director or less than 125 percent of the ACPD, this would not result in a violation of the regulation.

In the proposed rule, the Finance Board specifically requested comment on whether to include as part of the final regulation a provision under which a portion of each Bank's directors' annual compensation would be contingent upon that Bank's achievement of performance-related goals such as meeting particular earnings targets, achieving a satisfactory regulatory examination, or fulfilling the Bank's housing finance mission. Four of the commenters were opposed to including a requirement that a portion of a FHLBank's directors' compensation be incentive-based. Several commenters noted that incentive payments to board directors are traditionally made in the form of corporate stock and cited the prohibition against individual ownership of Bank stock, as well as the stock's non-equity nature, as reasons not to include an incentive component. In addition, concern that such a requirement would cause undue focus on short-term performance and the limited role in corporate governance played by the Bank boards were given as reasons not to include an incentive requirement in the regulation. One commenter supported the inclusion of a performance-based compensation requirement in the regulation only if it were designed to allow directors to receive compensation in addition to that provided for in the proposed regulation if performance goals are reached.

After reviewing the comment letters and considering various methods by which an incentive component could be included in the regulation, the Finance Board has concluded that, given the agency's long-term policy to devolve management authority to the Banks, as well as the ambiguous connection between the actions of individual directors and the achievement of annual performance targets by the Bank, a mandatory incentive requirement would be of dubious value and would undermine the intended devolutionary effect of the regulation. Therefore, such a requirement has not been included in the final rule. The regulation would allow a Bank to include an incentive component of its own creation in its compensation policy, if it so chooses, so long as the policy conforms to the requirements set forth in paragraph (c) of the regulation.

Paragraph (d) of new section 932.27 allows each Bank to pay its directors such Bank-related travel, subsistence

and other related expenses as are payable to senior officers of the Bank under the Bank's travel policy, except for gift or entertainment expenses. This provision, which is adopted as proposed, is intended to tie payment of directors' expenses to existing Bank policies which are subject to regulatory examination and which may be amended at the discretion of the Bank. Unlike the compensation provisions, which will not take effect until January 1, 1997, because the Banks already have established executive travel policies in place, the expenses provision may be implemented by the Banks as of the effective date of the rule, at which time the Finance Board intends to rescind the portion of the Policy governing director expenses.

Subsection (e) of new section 932.27, which did not appear in the proposed rule, requires each Bank to publish as separate items in its annual report: the total compensation paid to all of its directors, collectively, in the previous year; the total expenses paid to all its directors, collectively, in the previous year; and a summary of its policy on director compensation. In the proposed rule, the Finance Board requested comment on whether the new regulation should include a requirement that the Banks' policies on director compensation be made available to the public through either the Finance Board or the FHLBanks and, if so, should the policies be disseminated as a matter of course, or merely made available upon request. Three commenters specifically objected to the publication or distribution of director compensation polices as a matter of course, while the remaining three suggested that the regulation require that disclosures be made to the shareholders through Bank annual reports or other similar documents. However, two of the commenters made the latter suggestion in connection with their respective suggestions that the final regulation not include any kind of dollar limit on directors' compensation.

After considering the comment letters received, the greater autonomy that the Banks will have to set compensation levels under the new regulation and the public purpose that these government-sponsored enterprises were created by statute to carry out, the Finance Board has determined that it is appropriate to require the Banks to disclose the above-described summary information to their member institutions and the public. Accordingly, paragraph (e) is included in the final rule.

Finally, a new provision has been added to the final rule that amends section 941.7(f)(2) of the Finance Board's regulations. The existing regulatory provision requires that the OF pay its private citizen board member compensation and expenses in accordance with the Policy. However, because the Policy will be rescinded in its entirety at the end of 1996, this provision is being amended to require that the OF pay its private citizen board member compensation and expenses under a policy conforming to the guidelines of new section 932.27. New section 941.7(f)(2) provides for some minor modifications to section 932.27 for purposes of the cross-reference to account for the fact that the provision applies to only one OF director, as opposed to an entire board. The Finance Board considered including in the final rule an entirely separate compensation provision for the OF, but decided simply to cross-reference new section 932.27 pending a more comprehensive review of the structure of the OF board of directors.

III. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act. See 5 U.S.C. 601(6). Therefore, in accordance with 5 U.S.C. 605(b), the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 932

Conflict of interests, Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 941

Organization and functions (Government agencies).

Accordingly, chapter IX, title 12, Code of Federal Regulations, is hereby amended as follows:

PART 932—ORGANIZATION OF THE BANKS

1. The authority citation for part 932 continues to read as follows:

Authority: 12 U.S.C. 1442a, 1422b, 1426, 1427, 1464; 18 U.S.C. 207; 42 U.S.C. 8101 *et seq.*

2. Section 932.26 is added to read as follows:

§ 932.26 Site of board of directors and committee meetings.

Meetings of a Bank's board of directors and committees thereof usually should be held within the district served by the Bank. No meetings of a Bank's board of directors and committees thereof may be held in any location that is not within the United States, including its possessions and territories.

3. Section 932.27 is revised to read as follows:

§ 932.27 Compensation and expenses of bank directors.

(a) *Definitions.* As used in this section:

(1) *Compensation* means any payment of money or provision of any other thing of value (or the accrual of a right to receive money or a thing of value in a subsequent year) in consideration of a director's performance of official duties for the Bank, including, without limitation, retainer fees, daily meeting fees, incentive payments and fringe benefits.

(2) *Maximum compensation* means the maximum total compensation that would be paid to a director in a given year under the Bank's policy on director compensation if that director attended all meetings and fulfilled all duties assigned to or otherwise expected of him or her for that year.

(3) *Average compensation per director* (ACPD) means the sum of the maximum compensation for all directors serving on a Bank's board of directors, divided by the total number of directors designated by the Federal Housing Finance Board to serve on the Bank's board for that year.

(b) *Annual compensation.* For 1997 and each subsequent year, each Bank's board of directors shall adopt annually by resolution a written policy to provide for the payment to Bank directors of reasonable compensation for the performance of their duties as members of the Bank's board, subject to the requirements set forth in paragraph (c) of this section. At a minimum, such policy shall address the activities or functions for which attendance is necessary and appropriate and may be compensated, and shall explain and justify the methodology for determining the amount of compensation to be paid to directors.

(c) *Policy requirements.* Payment to directors under each Bank's policy on director compensation may be based upon factors that the Bank determines to be appropriate, but each Bank's policy shall conform to the following requirements:

(1) The annual ACPD for each Bank shall not exceed the amount calculated in accordance with paragraph (c)(2) of this section. Within this limit:

(i) The total actual compensation received by each director in a year shall reflect both the amount of time spent on official Bank business and the level of

responsibility assumed by that director, such that greater or lesser attendance at board and committee meetings and greater or lesser responsibility assumed by a director during a given year will be reflected in the actual compensation received by the director for that year; and

(ii) The maximum compensation for the chair of each Bank's board of directors in a given year shall not be equaled or exceeded by the maximum compensation of any other director for that year and shall not be less than 125 percent of the Bank's ACPD for that year.

(2) The limit on ACPD for each Bank shall be $28,000 for 1997. For 1998 and subsequent years, the limit on ACPD shall be adjusted annually to reflect the preceding year's change in the Consumer Price Index (CPI) for all urban consumers, as published by the Bureau of Labor Statistics. Each year, as soon as practicable after the publication of the previous year's CPI, the Board shall publish notice, by Federal Register, distribution of a memorandum, or otherwise, of the CPI-adjusted limit on ACPD.

(d) *Expenses.* Each Bank may pay its directors for such necessary and reasonable travel, subsistence and other related expenses incurred in connection with the performance of their official duties as are payable to senior officers of the Bank under the Bank's travel policy, except that directors may not be paid for gift or entertainment expenses.

(e) *Disclosure.* Each Bank shall, in its annual report:

(1) State the sum of the total actual compensation paid to its directors in that year;

(2) State the sum of the total actual expenses paid to its directors in that year; and

(3) Summarize its policy on director compensation.

PART 941—OPERATIONS OF THE OFFICE OF FINANCE

1. The authority for part 941 is revised to read as follows:

Authority: 12 U.S.C. 1422b, 1431.

2. Section 941.7(f)(2) is revised to read as follows:

§ 941.7 Office of Finance Board of Directors.

* * * * *

(f) * * *

(2) *Private Citizen member.* The Office of Finance shall pay compensation and expenses to the Private Citizen member of the OF board of directors in accordance with the requirements for payment of compensation and expenses to Bank directors set forth in section 932.27 of this chapter, except that, for these purposes:

(i) The Office of Finance policy on director compensation must be approved by the board of directors of the Finance Board;

(ii) Section 932.27(a)(3) and (c)(1)(ii) of this chapter shall not apply; and

(iii) The terms ''average compensation per director'' and ''ACPD,'' as used in § 932.27 of this chapter, shall mean ''maximum compensation of the Private Citizen member''.

By the Board of Directors of the Federal Housing Finance Board.

Dated: July 25, 1996.

Bruce A. Morrison,

Chairman.

[FR Doc. 96–21187 Filed 8–20–96; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–124–AD; Amendment 39–9687; AD 96–14–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information that appeared in airworthiness directive (AD) 96–14–05, amendment 39–9687, which was published in the Federal Register on July 9, 1996 (61 FR 35938). This AD is applicable to certain Boeing Model 767 series airplanes. Among other things, it supersedes a previously issued AD, requires inspections of the control rods of the outboard leading edge slat, and requires the installation of a modification that terminates the requirement for repetitive inspections. This action corrects the listed line numbers of airplanes subject to certain parts of the rule.

DATES: Effective August 13, 1996.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of August 13, 1996 (61 FR 35938, July 9, 1996).

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: On June 27, 1996, the FAA issued AD 96–14–05, amendment 39–9687; (61 FR 35938, July 9, 1996), which is applicable to certain Boeing Model 767 series airplanes and supersedes AD 90–20–16, amendment 39–6726 (55 FR 37858, September 14, 1990). That AD requires a one-time visual inspection to determine the date of manufacture of the control rods of the outboard leading edge slat, and follow-on actions (i.e., repetitive ultrasonic inspection), if necessary. It also requires replacement of the control rod ends and attach bolts, for certain airplanes. For operators accomplishing the (follow-on) repetitive ultrasonic inspections, the AD requires the replacement of the control rod with a new control rod manufactured after June 1983; this replacement constitutes terminating action for the repetitive inspections.

As published, paragraph (b) of AD 96–14–05 indicated that only certain airplanes were subject to its requirements. Those airplanes were specified as ones having line numbers ''1 through 264 inclusive, and 266 through 273 inclusive.'' However, due to a typographical error, the final number in this sequence of line numbers was incorrect: what was published as line number ''273,'' should have been line number ''272.'' The airplane having line number 273 is not subject to the requirements of paragraph (b) of this AD.

Action is taken herein to correct this typographical error in paragraph (b).

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of the AD remains August 13, 1996.

Accordingly, the final rule document (FR DOC. 96–16950), which was published on July 9, 1996, at 61 FR 35938, is corrected as follows:

§ 39.13 [Corrected]

On page 35940, in the second column, the text of paragraph (b) of AD 96–14–05, amendment 39–9687, is corrected to read as follows:

* * * * *

(b) For airplanes having line number 1 through 264 inclusive, and 266 through 272 inclusive: Within the next 2,500 landings or 18 months after October 23, 1990 (the effective date of AD 90–20–16, amendment 39–6726, whichever occurs first, replace the control rod end and attach bolt with a new configuration control rod end and attach bolt on each wing, in accordance

with Boeing Service Bulletin 767–57–0021, Revision 1, dated September 14, 1989; Revision 2, dated July 26, 1990; or Revision 5, dated June 15, 1995.

* * * * *

Issued in Renton, Washington, on August 14, 1996.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–21232 Filed 8–20–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 92F–0475]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of phosphorylated tall oil fatty acids as pigment dispersants in polymeric films intended for use in contact with food. This action is in response to a petition filed by SCM Chemicals.

DATES: Effective August 21, 1996; written objections and requests for a hearing September 20, 1996.

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

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of February 9, 1993 (58 FR 7789), FDA announced that a food additive petition (FAP 3B4350) had been filed by SCM Chemicals, c/o 1001 G St. NW., suite 500 West, Washington, DC 20001 (formerly, 1100 G St. NW., Washington, DC 20001). The petition proposed to amend the food additive regulations to add a new § 178.3725 *Pigment dispersants* (21 CFR 178.3725) to provide for the safe use of phosphorylated tall oil fatty acids as pigment dispersants in polymeric films intended for use in contact with food.

In the FDA evaluation of the safety of this food additive, the agency has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of dimethyl hydrogen phosphite, which is a carcinogenic impurity resulting from the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as dimethyl hydrogen phosphite, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under the so-called ''general safety clause'' section 409(c)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additive anticancer, or Delaney, clause of the act section 409(c)(3)(A) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to the impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive, *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, phosphorylated tall oil fatty acids, will result in exposure to no greater than 2.3 parts per billion (ppb) of the additive in the daily diet (3 kilogram (kg)) or an estimated daily intake (EDI) of 7 microgram per person per day (μg/person/day) (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure to this additive is safe.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of risk presented by dimethyl hydrogen phosphite, the carcinogenic chemical that may be present as an impurity in the additive. The risk evaluation of dimethyl hydrogen phosphite has two aspects: (1) Assessment of the worst-case exposure to the impurity from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassay to the conditions of probable exposure to humans.

A. Dimethyl Hydrogen Phosphite

FDA has estimated the hypothetical worst-case exposure to dimethyl hydrogen phosphite from the petitioned use of the additive as a pigment dispersant in polymeric films to be 0.009 ppb in the daily diet (3 kg), or 27 nanograms/person/day (Ref. 1). The Cancer Assessment Committee (CAC) of the Center for Food Safety and Applied Nutrition (CFSAN) reviewed data from a 103- week carcinogenic bioassay on dimethyl hydrogen phosphite in F344/N rats and $B6C3F_1$ mice conducted by the National Toxicology Program (NTP). The results of the bioassay on dimethyl hydrogen phosphite demonstrated that the material induced lung and forestomach neoplasms in male rats when administered by gavage in corn oil. The agency used the data reviewed by the CAC to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the proposed use of the additive.

Based on the estimated worst-case exposure to dimethyl hydrogen phosphite of 7 μg/person/day, FDA's CFSAN estimates that a worst-case upper-bound limit of lifetime human risk from the use of the subject additive is 1.4×10^{-9}, or 1.4 in one billion (Refs. 4 and 5). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to dimethyl hydrogen phosphite is likely to be substantially less than the worst-case exposure, and therefore, the upper-bound lifetime human risk would be less. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to dimethyl hydrogen phosphite would result from the proposed use of the additive.

B. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of dimethyl hydrogen phosphite present as an impurity in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which dimethyl hydrogen phosphite may be expected to remain as an impurity following production of the additive, the agency would not expect the impurity to become a component of food at other than extremely low levels; and (2) the upper-bound limit of lifetime human risk from exposure to the impurity, even under worst-case assumptions, is very low, less than 1.4 in a billion.

III. Conclusion

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed use of the additive as a pigment dispersant in polymeric films intended for use in contact with food is safe. Based on this information, the agency has also concluded that the additive will achieve its intended technical effect. Therefore, the agency concludes that a new § 178.3725 should be added to part 178 (21 CFR part 178) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

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

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before September 20, 1996, file with the Dockets Management Branch (address above) written objection thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from the Chemistry Review Branch (HFS–247) to the Indirect Additives Branch (HFS–216) concerning FAP 3B4350: Dietary Concentrations of the Additive and the Impurity (dimethyl hydrogen phosphite), April 28, 1994.

2. Kokoski, C. J., ''Regulatory Food Additive Toxicology,'' in *Chemical Safety Regulation and Compliance*, edited by F. Homburger and J. K. Marquis, S. Karger, New York, NY, pp. 24–33, 1985.

3. ''Toxicology and Carcinogenesis Studies of Dimethyl Hydrogen Phosphite,'' National Toxicology Program, Technical Report, #287, November 1985.

4. Memorandum from Executive Secretary, Cancer Assessment Committee (HFS–227) to Chairman, Cancer Assessment Committee, and Chairman, Quantitative Risk Assessment Committee: ''Tentative, Worst-case Risk Assessment for Dimethyl Hydrogen Phosphite,'' January 4, 1996.

5. Memorandum from Executive Secretary, Cancer Assessment Committee (HFS–227) to Chairman, Cancer Assessment Committee, and Chairmen, Quantitative Risk Assessment Committee: ''Risk Assessment for Dimethyl Hydrogen Phosphite (DMHP),'' June 26, 1996.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. New § 178.3725 is added to subpart D to read as follows:

§ 178.3725 Pigment dispersants.

Subject to the provisions of this regulation, the substances listed in this section may be safely used as pigment dispersants in food-contact materials.

Substances	Limitations
Phosphorylated tall oil fatty acids (CAS Reg. No. 68604–99–9), prepared by the reaction of dimethyl hydrogen phosphite with tall oil fatty acids.	For use only at levels not to exceed 1.0 percent by weight of the pigment. The pigmented polymeric films may contact all food under conditions of use D, E, F, and G described in Table 2 of § 176.170(c) of this chapter.

Dated: August 13, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–21229 Filed 8–20–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–96–002]

RIN 2115–AE47

Drawbridge Operation Regulations; Ebey Slough, Marysville WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily amending the regulations governing the operation of the twin State Route 529 drawbridges across Ebey Slough, mile 1.6, at Marysville, Washington. The temporary regulations will permit the swingspan to remain closed for several months so that the mechanical and electrical systems of the bridge can be overhauled. The closed period is February 1, 1997 to June 1, 1997.

EFFECTIVE DATES: This rule is effective from February 1, 1997, to June 1, 1997.

ADDRESSES: Unless otherwise noted, documents referred to in this preamble are available for inspection and copying at 915 Second Avenue, Room 3410, Seattle, Washington. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 220–7270).

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 21, 1996, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Ebey Slough, Marysville, WA, in the Federal Register (61 FR 6589). No comments were received in response to this notice.

Background and Purpose

At the request of the Washington State Department of Transportation, the Coast Guard is temporarily amending the regulations governing the operation of the State Route 529 drawbridge across Ebey Slough, Washington. Currently, this bridge is required to open for the passage of vessels if one hour notice is provided. The temporary regulations will permit the drawspan to remain closed for several months so that the mechanical and electrical systems of the bridge can be overhauled. The existing drawbridge operation regulations currently in effect will automatically be restored as soon as the temporary regulations expire on June 1, 1997.

Discussion of Comments and Changes

The Coast Guard did not receive any comments to the notice of proposed rulemaking and the rule is being adopted as proposed.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential cost 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 rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that there is very little commercial use of the waterway and the fact that the upper reaches of Ebey Slough beyond the State Route 529 drawbridge can be reached by an alternate route using Steamboat Slough.

Small Entities

For the reasons stated in Regulatory Evaluation above, the Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under 5 U.S.C. 605 (b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this action will not have a significant impact on a substantial number of small entities. The impact on small entities is expected to be minimal because of the minimal use of the waterway and the alternate route through Steamboat Slough.

Collection of Information

This action 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 action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this action and concluded that, under section 2.B.2. of Commandant Instruction M16475.B, this proposal is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

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

2. Effective February 1, 1997, to June 1, 1997, paragraph (h) of § 117.1059 is temporarily suspended and a new paragraph (j) is added to read as follows:

§ 117.1059 Snohomish River, Steamboat Slough, and Ebey Slough.

* * * * *

(j) The draws of the SR 529 highway bridge across Ebey Slough, mile 1.6, at Marysville, need not open for the passage of vessels from February 1, 1997, until June 1, 1997.

Dated: June 26, 1996.

J. David Spade,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 96–21087 Filed 8–20–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD13–96–001]

RIN 2115–AE47

Drawbridge Operation Regulations; Snohomish River, Everett, WA

AGENCY: Coast Guard, DOT.

ACTION; Temporary final rule.

SUMMARY: The Coast Guard is temporarily amending the regulations governing the operation of the twin State Route 529 drawbridges across the

Snohomish River, mile 3.6, at Everett, Washington. The temporary regulations will permit the drawspans to remain closed for several months so that the mechanical and electrical systems of the twin bridges can be overhauled. The closed period is October 1996, to January 31, 1997.

EFFECTIVE DATES: This rule is effective from October 1, 1996, to January 31, 1997.

ADDRESSES: Unless otherwise noted, documents referred to in this preamble are available for inspection and copying at 915 Second Avenue, Room 3410, Seattle, Washington. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 220–7270).

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 21, 1996, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Snohomish River, Everett, WA, in the Federal Register (61 FR 6588). No comments were received in response to this notice.

Background and Purpose

At the request of the Washington State Department of Transportation, the Coast Guard is temporarily amending the regulations governing the operation of the twin State Route 529 drawbridge across the Snohomish River at Everett, Washington. Currently, these bridges are required to open for the passage of vessels if one hour notice is provided. The temporary regulations will permit the drawspans to remain closed for several months so that the mechanical and electrical systems of the twin bridges can be overhauled. The existing drawbridge operation regulations currently in effect will automatically be restored as soon as the temporary regulations expire on January 31, 1997.

Discussion of Comments and Changes

The Coast Guard did not receive any comments to the notice of proposed rulemaking and the rule is being adopted as proposed.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential cost 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 rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the commercial users of the waterway can pass under the bridges without an opening during low tide conditions.

Small Entities

For the reasons stated in Regulatory Evaluation above, the Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this action will not have a significant impact on a substantial number of small entities. The impact on small entities is expected to be minimal because commercial users of the waterway can pass under the bridges without an opening during low tide conditions.

Collection of Information

This action 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 action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this action and concluded that, under section 2.B.2. of Commandant Instruction M16475.B, this proposal is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

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

2. Effective October 1, 1996, to January 31, 1997, paragraph (c) of § 117.1059 is temporarily suspended and a new paragraph (i) is added to read as follows:

§ 117.1059 Snohomish River, Steamboat Slough, and Ebey Slough.

* * * * *

(i) The draws of the twin, SR 529, highway bridges across the Snohomish River, mile 3.6, at Everett need not open for the passage of vessels from October 1, 1996, until January 31, 1997.

Dated: June 26, 1996.

J. David Spade,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 96–21088 Filed 8–20–96; 8:45 a.m.]

BILLING CODE 4910–14–M 4

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91–141]

Expanded Interconnection With Local Telephone Company Facilities; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published Friday, September 17, 1993 (58 FR 48756). The regulations related to rights and responsibilities of interconnectors.

EFFECTIVE DATE: August 21, 1996.

FOR FURTHER INFORMATION CONTACT: David Sieradzki (202) 418–1530.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections affect parties who are taking expanded interconnection offerings from Class A local exchange carriers.

Need for Correction

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

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Accordingly, 47 CFR part 64 is corrected by making the following correcting amendments:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, unless otherwise noted.

§ 64.1402 [Amended]

2. In § 64.1402(c), the phrase ''until that local exchange carrier's tariffs implementing expanded interconnection for switched transport have become effective'' is added to the end of the sentence.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–21227 Filed 8–20–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 76

[CS Docket No. 96–46; FCC 96–334]

Open Video Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Third Report and Order and Second Order on Reconsideration adopts and modifies rules and policies concerning open video systems. The Third Report and Order amends our regulations to reflect the provisions regarding open video systems of the Telecommunications Act of 1996 (the ''1996 Act'') with respect to the definition of ''affiliate.'' The Second Order on Reconsideration amends or adopts regulations with respect to open video systems in response to petitions for reconsideration regarding the Second Report and Order in this proceeding. This item further fulfills Congress' mandate in adopting the 1996 Act and will provide guidance to open video system operators, video programming providers, and consumers concerning open video systems.

DATES: *Effective Date:* The requirements and regulations established in this decision shall become effective upon approval by OMB of the new information requirements adopted herein, but no sooner than September 20, 1996. The Commission will publish a document at a later date notifying the public as to the effective date.

Comments: Written comments by the public on the proposed and/or modified information collections are due on or before September 20, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before October 21, 1996.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Rick Chessen, Cable Services Bureau, (202) 418–7200. For additional information concerning the information collections contained herein, contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Third Report and Order and Second Order on Reconsideration in CS Docket No. 96–46, FCC No. 96–334, adopted August 7, 1996 and released August 8, 1996. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW., Washington, DC 20554.

The Second Order on Reconsideration contains proposed and/or modified information collections. It has been submitted to the OMB for review, as required by the Paperwork Reduction Act of 1995. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in the Second Order on Reconsideration. Comments should address: (a) Whether the proposed collections of information are necessary to the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0700.

Title: Implementation of Section 302 of the Telecommunications Act of 1996; Open Video Systems.

Form Number: FCC Form 1275.

Type of Review: Revision of a currently approved collection.

Respondents: 740. (10 OVS operators, 250 video programming providers that may request additional Notice of Intent information, file rate complaints, or initiate dispute cases, 60 broadcast stations that may elect type of carriage or make network non-duplication notifications, 100 programming providers that may make notification of invalid rights claimed, 300 must-carry list requesters, 20 oppositions to OVS operator certifications.)

Number of Responses: 3754. (10 Notices of Intent, 14 certifications of compliance filings and refilings, 250 requests for additional Notice of Intent information, 250 responses to requests for additional Notice of Intent information, 50 rate complaints, 50 rate justifications, 60 carriage elections, 10 must-carry recordkeepers, 300 must-carry list requests, 300 provisions of must-carry lists, 1200 notifications of network non-duplication rights to OVS operators, 100 programming provider notifications of invalid rights claimed, 1100 OVS operator notifications of network non-duplication rights to programming providers, 20 oppositions to certifications of compliance, 20 dispute case complainants, and 20 dispute case defendants.)

Estimated Burden to Respondents: Notice of Intent requirements: 10 prospective OVS operators are estimated to be in existence within the next year. Average number of entities that prospective OVS operators must notify with each Notice of Intent: 45. Average burden to each OVS operator to complete a Notice of Intent and to provide copies to all applicable entities: 8 hours apiece; therefore 10×8=80 hours. Estimated number of written requests for additional information that will be received subsequent to Notices of Intent: 25 per Notice of Intent×10 Notices=250. Average burden to prospective video programming providers to make each written request: 2 hours apiece; therefore 10×25×2=500 hours. Average burden to each OVS operator to provide the additional information to all prospective video programming providers: 8 hours apiece; therefore 10×8=80 hours. Total burden for all respondents=80+500+80=660 hours. Form 1275 Certification Process

requirements: We estimate that 14 certification filings and refilings will result in 10 certified OVS operators. Annual burden to OVS operators to complete certifications and serve on applicable local communities and opposition filers: 2 hours apiece; therefore 14×2=28 hours. Number of oppositions estimated to be filed with the Commission: 2 per certification; therefore 2×14=28. Average burden for completing oppositions: 4 hours per opposition; therefore 28×4=112 hours. Total burden for all respondents: 28+112=140 hours.

Rate Justification requirements: Estimated number of rate complaints that video programming providers will file: 5 per OVS operator; therefore 10×5=50. Estimated number of rate justifications filed by OVS operators in response to rate complaints: 50. Burden to video programming providers for filing complaints: 1 hour per complaint; therefore 50×1=50 hours. Burden to OVS operators for filing rate justifications: 20 hours per justification; therefore 10×5×20=1000 hours. Total burden for all respondents: 50+1,000=1050 hours.

Must-Carry and Retransmission Consent requirements: Number of OVS operators: 10. Average number of broadcast stations in each OVS operator's area of carriage: 6. Average burden to broadcast stations for each election for must-carry or retransmission consent: 2 hours per election; therefore 10×6×2 hours=120 hours. Annual recordkeeping burden for OVS operators to maintain list of its broadcast stations carried in fulfillment of must-carry requirements: 4 hours per OVS operator; therefore 10×4=40 hours. Estimated annual number of written requests received by OVS operators: 30 per OVS operator; therefore 10×30=300. Burden for completing written requests: .25 hours per request; therefore 10×30×.25=75 hours. Burden to OVS operators to respond to requests: .25 hours per request; therefore 10×30×.25=75 hours. Total burden for all respondents: 120+40+75+75=310 hours.

Sports Exclusivity, Network Non-Duplication and Syndicated Exclusivity requirements: Estimated number of notifications filed by television broadcast stations to notify OVS operators of exclusive or non-duplication rights being exercised: 6 stations in each OVS operator's area of carriage×20 annual notifications×10 OVS operators=1200. Burden to television stations to make notifications: .5 hours per notification; therefore 1200×.5=600 hours. Estimated number of notifications filed by programming providers to notify OVS operators of invalid exclusivity rights claimed: 100. Burden to programming providers to make notifications: .5 hours per notification; therefore 100×.5 hours=50 hours. Burden for OVS operator to make notifications to delete signals available to all programming providers on their systems: 1 hour per notification×1100 occurrences=1100 hours. Total burden for all respondents: 600+150+100=1750 hours.

Dispute Resolution requirements: Estimated number of notices filed by complainant: 20. Estimated number of defendants' responses to notices filed: 20. Average burden for each notice and response to notice: 4 hours apiece; therefore 40×4=160 hours. We estimate that the 20 notices will result in the initiation of 10 dispute cases. The average burden for complainants and defendants for undergoing all aspects of the dispute case: 25 hours per case; therefore 20 (10 complainants+10 defendants)×25=500 hours. Total burden to all respondents: 160+500=660 hours.

Total Annual Burden to Respondents: 4570 hours. (660+140+1050+310+1750+660).

Estimated Cost to Respondents: Notices of Intent costs of stationery and postage at $2 apiece for (10 Notices of Intent×45 entities)+250 requests for additional information+250 responses to requests for additional information=$1900.

Form 1275 Certification Process costs of stationery, diskettes, and postage at $10 for 14 filings and refilings sent to the Commission and all applicable local communities=$140. Costs of stationery and postage at $2 apiece for 28 opposition filings=$48. $140+$48=$188.

Rate Justifications costs of stationery and postage at $2 apiece for 50 rate complaints+50 rate justifications=$200.

Must-Carry and Retransmission Consent costs of stationery and postage at $2 apiece for 60 carriage elections+300 requests for lists+300 provisions of lists=$1320.

Sports Exclusivity, Network Non-Duplication and Syndicated Exclusivity costs of stationery and postage at $2 apiece for 1200 notifications to OVS operators+100 notifications of invalid rights claimed+1100 OVS operator notifications to programming providers=$4800.

Dispute Resolutions costs of stationery and postage at $2 apiece for 20 notices+20 responses to notices=$80. Costs of stationery and postage at $10 apiece for 10 complainants in dispute cases+10 defendants in dispute cases=$200. $80+$200=$280.

Total Estimated Costs to Respondents: $8688. ($1900+ $188+$200+$1320+ $4800+ $280).

Needs and Uses: The information collections contained herein are necessary to implement the statutory provisions for Open Video Systems contained in the Telecommunications Act of 1996.

I. Introduction

1. The Telecommunications Act of 1996 added Section 653 to the Communications Act, establishing open video systems as a new framework for entry into the video programming marketplace. Section 653 required that the Commission, within six months after the date of enactment of the 1996 Act, ''complete all actions necessary (including any reconsideration) to prescribe regulations'' to govern the operation of open video systems. Accordingly, on March 11, 1996, the Commission issued a *Notice of Proposed Rulemaking* regarding open video systems. *Report and Order and Notice of Proposed Rulemaking* in CS Docket No. 96–46 and CC Docket No. 87–266 (terminated), 61 FR 10496 (March 14, 1996), FCC 96–99, released March 11, 1996 (''*NPRM*''). Based on the record submitted in response to the *NPRM*, on May 31, 1996, the Commission adopted a *Second Report and Order* in which we prescribed rules and policies for governing the establishment and operation of open video systems. *Second Report and Order* in CS Docket No. 96–46, 61 FR 28698 (June 5, 1996), FCC 96–249, released June 3, 1996 (''*Second Report and Order*'').

2. In this *Second Order on Reconsideration*, we address issues raised in these filings, and modify or clarify our regulations accordingly. In addition, in the *Order and Notice of Proposed Rulemaking* in CS Docket No. 96–85 (''*Cable Reform Proceeding*''), we sought comment on the definition of ''affiliate'' in the context of open video systems. *Order and Notice of Proposed Rulemaking* in CS Docket No. 96–85 (Implementation of the Cable Act Reform Provisions of the Telecommunications Act of 1996) (''*Cable Reform Proceeding*''), 61 FR 19013 (April 30, 1996) 11 FCC Rcd 5937 (1996). In light of the six-month deadline set by Congress for the Commission to establish final open video system regulations, we address the affiliate issue in this *Third Report and Order*.

II. Third Report and Order—Definition of ''Affiliate''

3. *Background*. In the *Cable Reform Proceeding,* we specifically sought comment regarding the definition of ''affiliate'' in the context of the new statutory provisions governing open video systems. We subsequently received comments in the *Cable Reform Proceeding* addressing this issue. For purposes of our decision in this *Third Report and Order,* we incorporate those comments to the extent they specifically address the definition of affiliation in the context of the statutory provisions for open video systems. We noted that Congress added a new definition of ''affiliate'' in Section 3 of Title I of the Communications Act. This new provision defined ''affiliate'' for purposes of the Act, unless the context otherwise requires, as: a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term ''own'' means to ''own an equity interest (or the equivalent thereof) of more than 10 percent. We noted also, however, that Congress did not alter the separate definition of ''affiliate'' set forth under Title VI. Under Title VI, the term ''affiliate'' is defined, when used in relation to any person, to mean ''another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.'' We sought comment regarding the definition of the term ''affiliate'' in the context of the new statutory provisions for open video systems. We will address the affiliation definition for these provisions in the *Cable Reform Proceeding.*

4. *Discussion*. We agree with those commenters that argue that the new definition of ''affiliate'' in Title I does not apply to matters under Title VI since Title VI contains a separate definition of that term that does not set a percentage threshold as to what constitutes ownership. For our purposes, therefore, we must determine the point at which an open video system operator's ownership or control of another entity, or another entity's ownership or control of the open video system operator, makes that entity an affiliate for purposes of Section 653. In defining ''affiliate'' for purposes of Section 653, we will adopt the attribution standard that we use in the program access context. Thus, as we do in the program access context, we will apply the definitions contained in the notes to 47 CFR § 76.501 (which reflect the broadcast attribution rules contained in the notes to 47 CFR § 73.3555), with certain modifications. For instance, in contrast to the broadcast attribution rules: (a) We will consider an entity to be an open video system operator's ''affiliate'' if the open video system operator holds 5% or more of the entity's stock, whether voting or non-voting; (b) we will not adopt a single majority shareholder exception; and (c) all limited partnership interests of 5% or greater will qualify, regardless of insulation. Under the single majority shareholder exception, where there is a single holder of more than 50% of a corporation's outstanding voting stock, minority voting stock interests in the corporation are not attributable to shareholders irrespective of whether they exceed the 5% benchmark. *See* 47 CFR § 73.3555 note 2. In addition, as with both the program access standard and the broadcast attribution rules, actual working control, in whatever manner exercised, will also be deemed a cognizable interest.

III. Second Order on Reconsideration

A. Qualifications to be an Open Video System Operator

5. We decline to modify our decision in the *Second Report and Order* to allow non-LECs to operate open video systems, and to allow cable operators that are subject to effective competition in their cable franchise areas to convert their cable systems to open video systems. We disagree with Michigan Cities, et al. that our decision allowing non-LECs to operate open video systems is inconsistent with the plain language of the 1996 Act or the Act's legislative history. Permitting non-LECs to become open video system operators is not only a permissible reading of the statute, but is most consistent with Congress' goal of opening all telecommunications markets to competition. In addition, we disagree with the argument of the National League of Cities, et al. that our decision to permit cable operators to convert to open video may defeat the purposes of other Title VI requirements that apply to cable operators. Congress established cable and open video systems as two distinct video delivery models, each offering a particular combination of regulatory benefits and burdens. That an entity, by assuming the regulatory responsibilities of an open video system, may be relieved of regulatory responsibilities relating to cable is neither novel nor improper.

6. While we believe that cable operators should be allowed to operate open video systems, we also decline to alter our decision that cable operators may do so in their existing cable franchise areas only if they are subject to ''effective competition.'' The underlying premise of Section 653 is that open video system operators would be new entrants in established markets, competing directly with an incumbent cable operator. We believe that Congress exempted open video system operators from much of Title VI regulation because, in the vast majority of cases, they will be competing with incumbent cable operators for subscribers. Our effective competition restriction implements Congress' intent by ensuring that, where it is the incumbent cable operator itself that seeks to enter the marketplace as an open video system operator, there is at least one other multichannel video programming provider competing in the market.

7. We are not convinced, as NCTA argues, that the potential presence of multiple video programming providers on open video systems obviates the need for an effective competition requirement. There is no assurance that any particular system will generate sufficient competition between providers of ''comparable'' video programming services to qualify as a meaningful stand-in for effective facilities-based competition. While we agree with U S West that the expiration of a franchise agreement may remove a contractual impediment to a cable operator's conversion to an open video system, the public interest rationale that gave rise to the effective competition restriction remains. So long as a cable operator has the ability to exercise market power—i.e., is not subject to effective competition—it has not met the necessary pre-condition for operating an open video system.

8. We also continue to disagree with Cox's argument that the Commission has no authority to determine whether cable operators that are also LECs may operate open video systems. The second sentence of Section 653(a)(1) authorizes the Commission to determine whether any cable operator may convert to open video, regardless of other services it may also provide, including local exchange service. The Commission retains its authority over cable operators that also become LECs because, as Sprint notes, a cable operator does not lose its identity as a cable operator simply by offering additional types of services.

B. Certification Process

9. The *Second Report and Order* fully explains our reasons for not imposing pre-certification requirements regarding public rights-of-way, PEG obligations, revisions to cost allocation manuals, or separate subsidiaries. Petitioners have presented no new evidence or

arguments that would cause us to change our earlier conclusion.

10. In addition, we will maintain our rule that certification filings will be deemed approved unless disapproved by the Commission within ten days. Petitioners have not demonstrated that affirmative approval is necessary to provide notice to outside parties or to assure adequate Commission review. Also, because certification precedes the operator's actual implementation of the Commission's rules, we disagree with NCTA that the Commission is required, at this stage of the process, to do more than obtain adequate representations that the applicant will comply with the Commission's requirements. Further, we believe that any conflicts that arise regarding the operator's conduct can be addressed more fully in the 180-day dispute resolution process than in the ten-day certification process. Finally, we will not modify our rule that, if new physical plant is required, open video system operators must obtain Commission approval of their certification prior to the commencement of construction.

11. We do believe, however, that it is appropriate for a local government to have a reasonable opportunity to respond to a certification filing that implicates its community. We therefore will revise FCC Form 1275, our proposed certification form, to require applicants to list the names of the local communities in which they intend to operate, rather than describe them generally. Because some local communities may not have ready access to the Internet or to the Commission's public notices, we will also require applicants for certification to serve a copy of their FCC Form 1275 filing on the clerk or other designated official of all affected local communities on or before the date on which it is filed with the Commission. Service by mail is complete upon mailing, but if mailed, the served documents must be postmarked at least three days prior to the filing of the FCC Form 1275 with the Commission. Applicants also must inform the local communities that any oppositions and comments must be filed with the Commission within five days of an applicant's filing and must be served on the applicant.

C. Carriage of Video Programming Providers

12. *Notification and Enrollment of Video Programming Providers.* We fully considered the costs and benefits of requiring an open video system operator to provide local notice of its intent to establish an open video system. The Alliance for Community Media, et al. do not provide additional evidence concerning these costs or benefits. We reiterate our finding that dissemination of the Notice of Intent as required under the *Second Report and Order* will be a sufficient means for an entity to notify the public of its intention to establish an open video system.

13. *Open Video System Operator Discretion Regarding Video Programming Providers.* We find that the *Second Report and Order* fully considered most of the arguments and evidence raised on reconsideration by NCTA and Cox, as described above. We explained in the *Second Report and Order* that Section 653(a)(1) specifically permits the Commission, ''consistent with the public interest, convenience and necessity'' to determine when a cable operator may provide programming through an open video system. We also fully explained our construction of Section 653(b)(1)(A), which gives the Commission the discretion to determine when it is in the public interest, convenience and necessity for a cable operator either to become an open video system operator or to provide video programming over another entity's open video system. We therefore deny the petitions of NCTA and Cox to the extent they raise these particular contentions.

14. We also reject the cable operators' argument concerning access to open video systems by DBS and wireless service providers. The 1996 Act expressed a clear preference for facilities-based competition between cable operators and telephone companies, and allowing an open video system operator generally to limit the ability of a competing, in-region cable operator to obtain capacity on its system would encourage cable operators to develop and upgrade their own wireline systems. Cable operators possess substantial market power, and because these markets have been protected by high entry barriers, cable operators have been able to maintain prices above the level that would prevail if the market were competitive. Because of this market power, cable operators may have different incentives for seeking open video system capacity than would MVPDs that do not have such market power, such as DBS and wireless cable providers. Enabling a cable operator to obtain open video system capacity means that less capacity will be available for use by the system operator and for other entities. The open video system therefore could become a less attractive alternative for consumers, which would help preserve the cable operator's market power. We believe that these rationales currently do not apply to DBS or wireless cable providers because these MVPDs do not enjoy substantial market power. We therefore reaffirm our conclusion in the *Second Report and Order*. However, at such time that DBS or wireless cable providers possess sufficient market power to raise concerns similar to those associated with existing in-region, competing cable operators, we will reexamine this conclusion.

15. We also disagree with NCTA's argument that the Commission impermissibly delegated to open video system operators the discretion to preclude cable operators from obtaining capacity on the system. In determining that Section 653(a)(1) allows the Commission to determine when a cable operator may access an open video system, we merely interpreted the statute to allow the Commission to prescribe regulations to govern this situation. We adopted regulations that set forth the parameters for where a competing, in-region cable operator's access to an open video system may be limited, and for where access may not be limited. In any case, we will modify our regulations to emphasize our decision that, pursuant to the second sentence of Section 653(a)(1), the public interest, convenience and necessity is served by generally prohibiting a competing, in-region cable operator from obtaining capacity on an open video system.

16. There are two exceptions to this general rule. First, a competing, in-region cable operator may access an open video system when the open video system operator determines that it is in its interests to grant access. Second, a competing, in-region cable operator will be granted access to an open video system when such access will not significantly impede facilities-based competition. As previously determined, one situation in which facilities-based competition will be deemed not to be significantly impeded is where: (a) the competing, in-region cable operator and affiliated systems offer service to less than 20% of the households passed by the open video system; and (b) the competing, in-region cable operator and affiliated systems provide cable service to a total of less than 17,000 subscribers within the open video system's service area.

17. *Allocation of Open Video System Channel Capacity.* In the *Second Report and Order*, we permitted an open video system operator to implement its own method for allocating channel capacity to unaffiliated video programming providers, so long as capacity is allocated in an open, fair, non-discriminatory manner. We stated that

the process must be verifiable and insulated from any bias by the system operator. NCTA's arguments were fully considered and addressed in the *Second Report and Order.* NCTA offers no additional facts or arguments to support their position. Accordingly, we decline to reconsider our previous conclusion.

18. *Reallocation of Channel Capacity.* In the *Second Report and Order,* we required open video system operators to allocate open capacity, if any is available, at least once every three years, stating that requiring reallocation every three years will permit an open video system operator to sufficiently accommodate subsequent requests for carriage by video programming providers, while not causing unreasonable disruption to the system. The Telephone Joint Petitioners do not provide evidence that would compel the Commission to reconsider that conclusion. We note in this regard that no new programming service, which the Telephone Joint Petitioners assert would favor a longer reallocation period, have filed for reconsideration in this proceeding.

19. *Channel Positioning.* In the *Second Report and Order,* we permitted an open video system operator to assign channel positions, subject to Section 653's non-discrimination requirements. In the *Second Report and Order* we determined that the statute and our implementing regulations will prevent discrimination against unaffiliated video programming providers, notwithstanding an open video system operator's participation in the channel allocation process. The Alliance for Community Media, et al. do not present new facts or arguments to support the mandatory involvement of an independent entity. Accordingly, we decline the Alliance for Community Media's request for reconsideration.

20. *Channel Sharing.* In response to the Alliance for Community Media, et al.'s petition, we clarify that there is no requirement that a system operator charge a video programming provider a pro-rata fee because a programming service carried by that provider is placed on a shared channel. Thus, even if a video programming provider's programming service is placed on a shared channel, the video programming provider may be required to pay the same rate as if the programming service was placed on a non-shared channel. We think this clarification addresses the Alliance for Community Media, et al.'s concern that an open video system operator will engage in rate discrimination by placing favored video programming providers' programming services on shared channels. Second, ESPN argued that channel sharing should be conditioned on the approval of programming services in its reply comments to the *NPRM.* We fully considered those views in the *Second Report and Order,* where we stated that so long as each video programming provider has the contractual right to offer a particular program service to subscribers, it is unnecessary for the open video system operator to obtain the consent of the programming service in order to place that service on a shared channel. Third, we agree with NCTA that ad avails associated with a programming service carried by both the open video system operator or its affiliated video programming provider and an unaffiliated provider must be shared in an equitable manner. Examples of acceptable methods of sharing ad avails include apportioning the revenues from such ad avails on a per subscriber basis or apportioning the rights to sell the avails themselves. We will clarify that arrangements with regard to ad avails will be considered a term or condition of carriage, and an open video system operator must comply with Section 653(b)(1)(A) in negotiating their apportionment.

21. *Open Video System Operator Co-Packaging of Video Programming Selected by Unaffiliated Video Programming Providers.* We decline to adopt ESPN's proposal to require the consent of any programming services involved before a video programming provider may enter into a co-packaging agreement. We recognize ESPN's legitimate concerns that its program license agreements frequently contain negotiated terms related to the marketing of a programming service, including packaging parameters and trademark use guidelines. However, these are contractual matters that we believe are best left to the individual negotiations between the parties involved. If a video programming provider enters into a co-packaging arrangement that breaches its contractual obligations, we believe that ESPN and other such programming services already possess adequate remedies at law. Nothing in our rules should be construed to infringe upon the rights of programming services with respect to their program license obligations.

D. Rates, Terms, and Conditions of Service

22. *Just and Reasonable Carriage Rates.* In its petition, MCI has provided no new facts or arguments to justify reconsideration of these concerns in the instant proceeding. We also decline to impose the other pre-certification and reporting requirements MCI seeks. We believe that these requirements are inconsistent with our flexible regulatory approach to the provision of open video system, and are not necessary to protect either unaffiliated programmers or the public in general. In addition, we decline to require open video system operators to base their carriage rates on detailed studies of incremental and stand alone cost and estimates of actual opportunity cost, as suggested by MCI, because of the 1996 Act's direction that Title II requirements not be applied to open video systems, and the limited time allowed for the review of certifications and complaints. Instead, we reaffirm our imputed rate approach for determining whether carriage rates are just and reasonable where the presumption conditions are not present. We also decline to adopt MCI's proposal to allow parties other than potential video programming providers seeking carriage on the open video system to file complaints with the Commission regarding the carriage rates offered by the system operator. This decision does not leave other parties who claim to be adversely affected by an open video system operator's carriage rate without remedies. For example, a party seeking to challenge a rate it pays for common carrier services provided by that operator on the ground of improper cost-shifting from an open video system, retains its rights under section 208 of the Communications Act to file a complaint.

23. We disagree with the general assertion by the National League of Cities, et al. that our presumption conditions will not provide adequate protection to unaffiliated video programming providers. The National League of Cities et al. have presented no new arguments or data to refute this conclusion. Moreover, we disagree with National League of Cities et al.'s contention that the presumption approach places an undue financial and regulatory burden on the unaffiliated programmer to determine whether the operators' rates are fair. Our presumption approach strikes an appropriate balance between the interests of the open video system operator in establishing service to end users quickly, without undue regulatory intervention by competitors, and the interests of unaffiliated programmers in obtaining just and reasonable carriage rates. The National League of Cities, et al. also expressed the specific concern that the presumption conditions will allow the average rate paid by the unaffiliated programming providers receiving carriage to be ''weighted'' or

adjusted, but that only the open video system operator will possess the information necessary to calculate the average or to ''weight'' the average. We clarify that, as part of its burden of showing that the presumption conditions are met, an open video system operator will be required to make available to a complainant all information needed to calculate the average rate paid by the unaffiliated programming providers receiving carriage on its system, including the information needed for any weighting of the individual carriage rates that the operator has included in the average rate. The complainant may challenge the weighting methodology used by the open video system operator as part of its case.

24. In response to the Telephone Joint Petitioners' request, we clarify that in the *Second Report and Order*, the phrase ''unaffiliated programmers as a group'' does not impose a requirement that the programmers market their programming in competition with the operator. Rather, the phrase is used to give open video system operators greater flexibility in meeting the presumption conditions. It allows operators to meet the requirement by providing carriage to several unaffiliated programmers that in total occupy the threshold capacity requirement.

25. We reaffirm our basic imputed rate approach for ensuring just and reasonable open video system carriage rates where the presumption conditions are not met, but clarify our use of certain terminology. We structured the imputed rate in the *Second Report and Order* to reflect what the open video system operator, or its affiliate, effectively ''pays'' for its own carriage of programming over the system by starting with the revenues received from the end user subscriber, and subtracting the costs avoided by the open video system operator by permitting another programming provider to serve that subscriber. No petitioner has convinced us that an imputed rate approach is not suitable to the circumstances of open video system carriage, where a new market entrant (the open video system operator) will, in the majority of areas, face competition from an established incumbent (the cable operator).

26. As we noted in the *Second Report and Order*, open video systems are essentially a combination of: (a) the creative development and production of programming, (b) the packaging of various programs for the open video system operator's offering, and (c) the creation and maintenance of infrastructure for the carriage of both the operator's affiliated programming and unaffiliated programming. Our rules are intended to ensure that unaffiliated programming providers pay a rate for carriage that is no more than the carriage price that can be fairly imputed for the carriage of the operator's affiliated programming packages. In so doing we seek to attain an important result of the ECPR, which is that the price the operator charges unaffiliated programming providers for carriage must be no higher than the sum of its incremental cost of carriage and the contribution to fixed infrastructure costs in its retail price of programming.

27. We disagree with the assertion by the Telephone Joint Petitioners that the Commission errs by using an ECPR methodology to establish carriage pricing on open video systems, where it is not appropriate, while declining to use ECPR to establish LEC interconnection pricing in situations where they assert it is appropriate. Like ECPR, our imputed rate approach will provide the open video system operator the same return when it carries unaffiliated programming as when it carries its own programming. We believe that in the case of open video systems, application of an ECPR methodology provides full economic incentives for LEC entry into video in competition with incumbent cable providers.

28. We disagree also with the assertion by the Telephone Joint Petitioners that the imputed price omits the incremental cost of carriage. Under normal market conditions, the imputed price of carriage will exceed the open video system operator's incremental cost of carriage (which is greater than zero) and make a contribution to the fixed infrastructure cost of the open video system. For this reason, we reject the Telephone Joint Petitioners' assertion that the imputed rate approach will produce a carriage rate of zero or less. The imputed rate is based in part on the price charged by the open video system operator or its affiliate to end-user subscribers. The price charged the subscriber will generally be greater than the incremental cost of carriage. In addition, the imputed rate subtracts out the costs of developing the programming and creating the package, which removes the costs avoided when unaffiliated programming is carried. After subtracting these costs, the imputed rate will correspond to the carriage rate that the open video system operator ''pays'' to carry its own programming. The imputed rate approach is designed to give the open video system operator the same economic return when it sells carriage to unaffiliated programming providers as when it ''sells'' carriage to its own programming. Consequently, we would expect the use of the ECPR approach to minimize any disincentives the open video system operator may have to carry unaffiliated programming.

29. We believe that this result of the imputed rate approach should be achieved even under the competitive conditions assumed by the Telephone Joint Petitioners in their petition. Even assuming that, at the outset of open video system operations, competition lowered the retail price of video programming to subscribers to the point that the open video system operator incurred losses, this would not justify the operator's shifting the burden of such losses to unaffiliated video programming providers by charging them a higher carriage rate than the rate that it effectively ''charges'' itself. The unaffiliated programming providers would also face lower retail prices for their programming under the competitive conditions assumed by the Telephone Joint Petitioners. We disagree with the Telephone Joint Petitioners' assertion that unaffiliated programmers would be largely unaffected by retail price competition.

30. The imputed rate approach was chosen as a flexible regulatory approach for determining what are just and reasonable carriage rates in an imperfectly competitive carriage market. However, it may not be the sole means of establishing just and reasonable carriage rates. There may be alternative, market-based approaches to demonstrating that a challenged rate is just and reasonable, that may also be useful in particular cases. We would consider such an argument in response to a complaint regarding a carriage rate. The open video system operator would be required to demonstrate that its carriage service is subject to sufficiently strong competitive forces to ensure that its carriage rates are just and reasonable, or that it has computed its rate using a methodology that aims to produce or replicate the working of a competitive carriage market.

31. In addition, on reconsideration, we find that certain aspects of our explanation and use of terminology should be clarified. As we stated above, under our approach, the imputed price of carriage for an affiliated programming package equals the price of the package delivered to a subscriber minus the cost of creating the package. To clarify the terms identified by the Telephone Joint Petitioners, in the *Second Report and Order* we use the term ''earning'' to refer to the difference between the price of the package delivered to a subscriber and the cost of creating the package. We

use the term ''profit allowance'' to refer to one type of cost of creating the programming package, namely the cost of capital used to create the package. We also clarify Section 76.1504 of the rules to indicate more clearly the types of avoided costs that must be subtracted by an open video system operator in calculating the imputed rate.

32. We also clarify in response to the National League of Cities, et al. that the imputed rate formula will not allow open video system operators to charge unaffiliated programming providers a price for carriage equal to the price they charge subscribers for affiliated programming. The imputed rate formula, as we have discussed, requires open video system operators to subtract the cost of creating affiliated programming from the price of the programming. The carriage rate that unaffiliated programming providers pay will be less than the price subscribers pay for affiliated programming.

33. *Open Video System Carriage Rates Must Not be Unjustly or Unreasonably Discriminatory.* The petitioners' concerns about whether open video system rates are nondiscriminatory ignores the wording of the 1996 Act, which prohibits rate differences only when unjust or unreasonable. As we noted in the *Second Report and Order*, we decided to permit carriage rate differentiation because requiring open video system operators to charge all programming providers the same carriage rate would exclude providers whose programming has a low market value. Neither NCTA nor MCI has offered new factual or legal arguments to refute this reasoning.

34. We disagree with the Alliance for Community Media, et al., that open video system operators should be required to charge reduced carriage rates to non-profit programming providers. In the *Second Report and Order*, we identified not-for-profit status as one of the legitimate, objective factors on which open video system operators could base reduced rates. Moreover, we are concerned about the impact of mandatory reduced carriage rates on a new entrant in the markets for video carriage and distribution. Our decision to allow preferred carriage rates for non-profit programmers on a voluntary basis reflects our goals of promoting open video system entry and competition with incumbent cable systems, while providing access to carriage by unaffiliated programming providers.

E. Gross Revenues Fee

35. We generally reaffirm our conclusions in the *Second Report and Order*. We continue to believe that our interpretation represents the best reading of Section 653(c)(2)(B). We will, however, clarify our rule to make clear our intent that local governments have the authority to charge and receive the gross revenue fee. In addition, consistent with Congress' intent of ensuring ''parity among video providers,'' we will clarify that any advertising revenues received by an open video system operator or its affiliates in connection with the provision of video programming should be included in the fee calculation, where such revenues are included in the incumbent cable operator's franchise fee calculation.

36. We agree with NYNEX and U S West that the application of the gross revenues fee provision should not disadvantage any particular video programming provider. Like the costs of PEG and must-carry, we believe that the gross revenues fee is a cost of the platform—in this case, the cost of using the rights-of-way—that should be shared equitably among all users of the system. We therefore will permit open video system operators to recover the gross revenues fee from all video programming providers on a proportional basis as an element of the carriage rate.

F. Applicability of Title VI Provisions

37. *Public, Educational and Governmental Access Channels.* We continue to believe that open video system operators should in the first instance be permitted to negotiate their PEG access obligations with the relevant local franchising authority and, if the parties so desire, the local cable operator. Furthermore, we continue to believe that it is necessary to have a default mechanism in case the open video system operator and the local franchising authority are unable to agree. We disagree with Comcast that open video system operators should be required to negotiate with local franchising authorities. Providing a ''backstop'' is an appropriate balance between imposing Section 611's requirements and not imposing franchise requirements on open video systems. If the open video system operator matches the PEG access obligations of the cable operator, the actual PEG access obligations imposed on the open video system operator will be, as the statute requires, to the extent possible no greater or lesser than those imposed on the cable operator. This is true even if the open video system operator's obligations are established through our default mechanism and the cable operator's obligations are established through negotiation and the franchise process.

38. After considering the arguments made by the various petitioners, we believe, however, that some modification of our rule regarding how to establish open video system PEG access obligations is appropriate. We believe that imposing Section 611 obligations on open video system operators so that to the extent possible the obligations are ''no greater or lesser'' than those imposed on cable operators means that, in the absence of an agreement with the local franchising authority, an open video system operator must match, rather than share, the annual PEG access financial contributions of the local cable operator. Under our current rule, open video system operators are required to match the PEG access channel capacity provided by the local cable operator, but are required to share the contributions towards PEG access services, facilities and equipment. Our modified rule will apply the matching principle which we have applied to channel capacity also to PEG contributions that cable operators make, and that are actually used for PEG access services, facilities and equipment.

39. For in-kind contributions (e.g., cameras, production studios), we believe that precise duplication would often be unnecessary, wasteful and inappropriate. Instead, open video system operators may work out mutually agreeable terms with cable operators over in-kind equipment, studios and the like so that PEG service to the community is improved or increased and the open video system operator fulfills its statutory obligation. As a backstop, however, we will permit the open video system operator to pay the local franchising authority the monetary equivalent of the depreciated in-kind contribution, or in the case of facilities, the annual amortization value. Any matching PEG access contributions provided by an open video system operator are to be used by the local franchising authority to fund activities arising under Section 611.

40. We decline to modify our rule that requires the local cable operator to permit the open video system operator to connect with the cable operator's PEG access channel feed. We clarify, however, that any costs associated with the open video system operator's connection to the cable operator's PEG access channel feed shall be borne by the open video system operator. These costs shall be counted towards the open video system operator's matching obligation described above. We are not requiring the local cable operator to

permit others to interconnect with and use their cable system to reach consumers. Rather, we are simply requiring the local cable operator to provide its PEG access channel feed to a particular competitor that shares a similar PEG access obligation in order to avoid an unnecessary duplication of facilities and promote Congress' goal of competitive entry.

41. In response to the request of Municipal Services, et al., we clarify that the negotiated PEG access obligations of an open video system operator may be enforced regardless of where and when the agreement is made. Regarding City of Indianapolis's assertion that channel alignment should not be at the discretion of the open video system, we affirm our decision in the *Second Report and Order* that there is insufficient evidence to support mandating that PEG access channels be carried at the same channel location on the open video system operator as on the cable system. City of Indianapolis has presented no new evidence or argument not presented to the Commission before.

42. *Establishing Open Video System PEG Access Obligations Where No Local Cable Operator Exists.* Our discussion in the *Second Report and Order* regarding the establishment of open video system PEG access obligations where no local cable operator exists was not intended to foreclose a local franchising authority from negotiating with the open video system operator. The discussion was intended to explain how to establish open video system PEG access obligations where no local cable operator exists and the local franchising authority and the open video system operator cannot agree. The parties are therefore free to negotiate PEG access obligations as Alliance for Community, et al. request. However, if the open video system operator and the local franchising authority cannot agree, the operator must make a reasonable amount of channel capacity available for PEG use. In the *Second Report and Order,* we found that where a cable franchise previously existed, such as where a cable system is able to convert to an open video system, what constitutes a reasonable amount of channel capacity is to be governed by the previously existing franchise agreement with respect to PEG access obligations.

43. While we do not believe that Congress intended open video system PEG access obligations to correct deficiencies in what the local franchising authority negotiated for cable operator PEG access obligations, we also recognize the concern that PEG access requirements should not be frozen in time in perpetuity. We will therefore modify our approach for a situation in which there was a previously existing cable franchise, such as where a cable system converts to an open video system, and provide that, when the open video system operator and the local franchising authority cannot agree on PEG access obligations, the local franchising authority may either keep the previously existing PEG access obligations or may elect to have the open video system operator's PEG access obligations determined by comparison to the franchise agreement for the nearest operating cable system that has a commitment to provide PEG access and that serves a franchise area with a similar population size. The local franchising authority shall be permitted to make a similar election every 15 years thereafter.

44. *Open Video System PEG Obligations Where System Overlaps with More than One Franchise Area.* While we do not disagree with Telephone Joint Petitioners that open video systems may be configured differently from cable systems, as Alliance for Community Media, et al. point out, Telephone Joint Petitioners provide insufficient support for why open video systems will not be able to be configured to comply with the PEG access obligations for each franchise area with which each system overlaps. In fact, Michigan Cities, et al. demonstrate that, in at least one situation, it is indeed possible. We therefore deny Telephone Joint Petitioners' petition with respect to this matter.

45. *Institutional Networks.* We affirm our decision to preclude local franchising authorities from requiring open video system operators to build institutional networks because the cable operator is required to do so under the terms of its franchise agreement. Because there is confusion over our interpretation of Section 611 as it applies to institutional networks, however, we make the following clarifications. Contrary to the understanding of certain petitioners, we agree that institutional networks may be required of a cable operator, but we do not agree that this requirement is found in Section 611. Section 611 only provides that a local franchising authority may require that channel capacity on institutional networks be designated for educational or governmental use and does not authorize local franchising authorities to require cable operators to build institutional networks. The building of an institutional network is a requirement negotiated in the franchise agreement. Section 621(b)(3)(D), as added by the 1996 Act, makes clear that a local franchising authority may require a cable operator to provide institutional networks as a condition of the initial grant, renewal or transfer of a franchise. Pursuant to Section 653(c)(1)(C), open video system operators are not subject to franchise requirements, so we cannot apply an institutional network requirement to open video systems.

46. While institutional networks may or may not function like PEG access as National League of Cities, et al. assert, the statutory definition is broader than merely PEG use. We do not agree that precluding the local franchising authority from requiring an open video system operator to build an institutional network, but permitting the local franchising authority to require channel capacity on a network if an open video system operator does build one, is inconsistent, as Michigan Cities, et al. suggest. Rather, once an open video system operator decides to build an institutional network, the 1996 Act's mandate that an open video system operator's PEG access obligations be no greater or lesser than those of the cable operator become operative.

47. *Must-Carry and Retransmission Consent.* In the *Second Report and Order,* the Commission considered and rejected suggestions similar to NCTA's that we specifically require the use of a basic tier-type arrangement in order to provide all subscribers on a system with the signals carried in fulfillment of the must-carry requirements. As we noted in the *Second Report and Order,* the basic tier requirement is contained in Section 623 of the Communications Act, which does not apply to open video systems. NCTA has presented no new evidence in support of a basic tier requirement. We therefore decline to adopt NCTA's request. We agree with NCTA, however, that video programming providers should not be required to duplicate must-carry programming already provided to subscribers from another source.

48. The Commission recognizes ALTV's valid concern that stations electing must-carry status will have to reimburse open video system operators for extensive copyright fees that may result from carriage beyond their local market areas. As ALTV notes, these dangers may be avoided if open video system operators tailor the distribution of must-carry signals to the parts of their system that are located within a station's local market. We believe that our rules provide open video system operators with an incentive to design

and construct their systems with this capability. Where an open video system has such a capability, we will require open video system operators to limit the distribution of must-carry signals to the appropriate local markets, unless a local broadcast station consents otherwise. If an open video system operator cannot limit its distribution of must-carry signals in this manner, the open video system operator will be responsible for any increase in copyright fees and may not pass through such increases to the local station electing must-carry treatment.

49. Finally, we agree with Tele-TV and U S West that we should amend our current rule that allows broadcasters to make different elections among open video systems and cable systems serving the same geographic area. The ''common election'' requirement is contained in Section 325(b)(3)(B): ''If there is more than one cable system which services the same geographic area, a station's election shall apply to all such cable systems.'' In Section 653(c), Congress provided that Section 325 should apply to open video system operators, to the extent possible, no greater or lesser than it applies to cable operators. By directing equal treatment under Section 325, we believe that Congress intended to remove Section 325 as a distinguishing factor between those entering the video marketplace as a cable operator and those entering as an open video operator. In the *Second Report and Order,* however, we found that as a practical matter the potential size differences between open video systems and cable systems could make common election on overlapping cable and open video systems infeasible. We agree with Tele-TV that our concern in the *Second Report and Order* may no longer apply to the extent that an open video system can tailor the distribution of local broadcast stations to the appropriate communities. We will therefore amend our rules to require that broadcasters make the same election for open video systems and cable systems serving the same geographic area unless the overlapping open video system is unable to deliver appropriate signals in conformance with the broadcast station's elections for all cable systems serving the same geographic area.

50. *Program Access.* We believe that our initial interpretation applying the provisions of Section 628 to open video system programming providers is reasonable and should stand. Rainbow and NCTA's argument that Congress limited the applicability of the program access rules to open video system operators was expressly considered and rejected in the *Second Report and Order.*

51. As we stated in the *Second Report and Order,* an exclusive contract between a cable-affiliated video programming provider on an open video system and a cable-affiliated programmer presents many of the same concerns as an exclusive contract between a cable operator and a vertically integrated satellite programming vendor. A primary objective of the program access requirements is the release of programming to existing or potential competitors of traditional cable systems so that the public may benefit from the development of competitive distributors. Exclusive arrangements among cable-affiliated open video system programming providers and cable-affiliated satellite programmers may impede the development of open video systems as a viable competitor to cable. NCTA and Rainbow fail to challenge or address these concerns.

52. Second, we believe that the benefits of the program access provisions apply to open video system providers. Contrary to Rainbow's arguments, open video system programming providers fall within the definition of MVPDs, which Section 628 identified as the intended beneficiaries of the program access regime. We believe that Section 602(13)'s list of entities enumerated in that section is expressly a non-exclusive list. Section 602(13) states that the term MVPD ''means a person such as, *but not limited to,* a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service. * * * '' We also agree with those commenters that asserted that open video system video programming providers fit the definition of MVPD because they make ''available for purchase, by subscribers or customers, multiple channels of video programming.

53. Third, we reject NCTA's argument that intra-system competition would be harmed by applying the program access rules to cable-affiliated video programming providers on an open video system. Our concern is the same as in the cable context—that a cable operator would use its control over programming to keep that programming from other competing MVPDs. We are concerned that exclusive arrangements among cable-affiliated open video system programming providers and cable-affiliated satellite programmers may serve to impede development of open video systems as a viable competitor to cable to the extent that popular programming services are denied to open video system operators or unaffiliated open video system programming providers that seek to package such programming for distribution to subscribers.

54. We reiterate that the prohibition, absent a Commission public interest finding, on exclusive contracts applies only to contracts between cable-affiliated satellite programmers and cable-affiliated open video system programming providers and contracts between satellite programmers affiliated with an open video system operator and open video system programming providers affiliated with an open video system operator. We note that a vertically integrated satellite programmer is not generally restricted from entering into an exclusive contract with an MVPD that is not affiliated with a cable operator, although such a contract is subject to challenge under Section 628(b) of the Communications Act and Section 76.1001 of the Commission's rules.

55. *Sports Exclusivity, Network Non-Duplication and Syndicated Exclusivity.* Upon reconsideration, we grant the petition filed by the Joint Sports Petitioners regarding our current rule governing sports exclusivity. We find merit in their position that, unlike network non-duplication and syndicated exclusivity, sports exclusivity requires infrequent deletions that cannot be recouped once missed. We believe that our rule that extends the Commission's regulations concerning sports exclusivity to open video systems must be amended in order to preserve the same level of protection received by sports teams and leagues in the cable context. While we hold open video system operators responsible for compliance with our rules, we also recognize that they are forced by the structure of an open video system to rely, to a degree, on individual programming providers who may dispute a claim of exclusivity or may attempt to substitute a signal for the signal that is to be deleted. We amend our rule to provide that open video system operators will be subject to sanctions for any violation of our sports exclusivity rules. Operators generally may effect the deletion of signals for which they receive deletion notices unless they receive notice within a reasonable time from the appropriate programming provider that the rights claimed are invalid. If a programmer challenges the validity of claimed exclusive or non-duplication rights, the open video system operator shall not delete the signal. However, an open video system operator should be allowed to require indemnification as a

condition of carriage for any sanctions it may incur in reliance on a programmer's claim that certain exclusive or non-duplication rights are invalid.

56. Contrary to the further concerns mentioned by the Joint Sports Petitioners, our current rules do not require a sports team or league to provide notifications to individual video programming providers in addition to the open video system operator. The holder of exclusive or non-duplication rights is, of course, free to notify individual programming providers when it notifies the open video system operator as required by our rules. In addition, our rules require an open video system operator to make the notices it receives ''immediately available'' to the appropriate programming providers on its system. Given the different types of systems and different circumstances in which notice will be provided, we do not believe at this time that a specific time requirement is necessary or appropriate.

57. We also deny U S West's petition for reconsideration which suggests that the Commission hold individual programming providers responsible for compliance with our exclusivity and non-duplication rules, and asks the Commission to further define the ''prompt steps'' that must be taken by an operator in order to avoid liability after a violation of our rules has occurred. In the *Second Report and Order*, the Commission responded to the issues raised in U S West's petition. U S West does not present any further evidence to support the adoption of different rules.

58. *Local Franchising Requirements.* We thoroughly explained the bases of our findings in the *Second Report and Order* on these issues. No parties on reconsideration raise any arguments that lead us to revisit our conclusions therein. We continue to believe that the general distinction we adopted reflects Congress' stated intent: state and local authorities may manage the public rights-of-way in a non-discriminatory and competitively neutral manner, but may not impose Title VI franchise or Title VI ''franchise-like'' requirements on open video system operators.

59. We do, however, clarify our decision in several respects. First, we clarify that the preemption is limited to Title VI or Title VI ''franchise-like'' requirements, and does not extend to all types of potential franchises. If, for example, a state or local government characterizes permission to use the public rights-of-way as a ''franchise,'' such franchises are not preempted so long as they are issued in a non-discriminatory and competitively neutral manner. We agree with U S West that the key in this regard is not how such requirements are labeled, but their effect. If the local requirements are Title VI-like requirements that would frustrate Congress' intent in adopting the 1996 Act's open video provisions, we continue to believe they are preempted.

60. Second, we clarify that ''non-discriminatory and competitively neutral'' treatment does not necessarily mean ''equal'' treatment. For instance, it could be a non-discriminatory and competitively neutral regulation for a state or local authority to impose higher insurance requirements based on the number of street cuts an entity planned to make, even though such a regulation would not treat all entities ''equally.'' Third, we clarify that when the *Second Report and Order* stated that local authorities may ensure the public safety in the use of rights-of-way by ''gas, telephone, electric, cable and similar companies,'' an open video system would qualify as a ''similar company.''

61. We continue to disagree with the National League of Cities, et al. that the narrow preemption in the *Second Report and Order* violates the Fifth Amendment. First, although the National League of Cities, et al. assert that the *Second Report and Order* ''grossly underestimates'' the compensation due to local authorities, they fail to address the Commission's finding that the ''before and after'' test—in which the measure of compensation is the difference in the value of the property before a partial taking and the value of the property after the partial taking—is the proper test to apply. Second, we do not agree with the National League of Cities, et al. that the local community has not received just compensation unless an open video system operator matches the franchise and other obligations imposed upon the incumbent cable operator. Such a requirement would obviously render meaningless Congress' exemption of open video from Section 621 franchising requirements, since an open video system operator would be forced to comply with each of the incumbent cable operator's franchise terms or be subject to a Fifth Amendment ''takings'' claim. Third, the *Second Report and Order* specifically permits the recovery of normal fees associated with the construction of an open video system: ''[A] state or local government could impose normal fees associated with zoning and construction of an open video system, so long as such fees [are] applied in a non-discriminatory and competitively neutral manner.'' We clarify, however, that these ''normal fees associated with zoning and construction'' should not duplicate the compensation provided by the gross revenues fee. As we stated in the *Second Report and Order*, it is apparent that the gross revenue fee ''in lieu of'' a franchise fee was intended as compensation by open video system operators for use of the public rights-of-way. The National League of Cities, et al. have not explained why the fees associated with the construction of open video systems would be any different than the fees associated with any other users of the rights-of-way, and why regulations applied in a non-discriminatory, competitively neutral manner on all users of the rights-of-way would be insufficient to deal with such matters.

62. Finally, we find that a determination of whether LECs that use the rights-of-way for open video service remain subject to the same conditions contained in the pre-existing telephone franchise agreements can only be made on a case-by-case basis in light of the particular agreement between the parties. Thus, we make no general conclusions here.

G. Information Provided to Subscriber

63. On reconsideration, we agree that video programming providers, including those affiliated with the open video system operator, should be permitted to develop and use their own navigational devices. We agree with Tele-TV and NYNEX that individualized navigational devices could be a factor in subscribers' choice of programming providers, thereby fostering innovation and competition among providers. While for technical considerations we will not require open video system operators to permit programming providers to use their own navigational devices, we do not believe that the same limitation should be placed on a provider's right to develop and use their own individualized guides and menus. We believe that it would be an impermissible term or condition of carriage under Section 653(b)(1) for an open video system operator to restrict a video programming provider's ability to use part of its channel capacity to provide an individualized guide or menu to its subscribers.

64. We believe that several safeguards are necessary to effectuate congressional intent and protect unaffiliated programming providers. First, we reaffirm our conclusion in the *Second Report and Order* that an open video system operator cannot evade its non-discrimination obligations under Section 653(b)(1)(E) simply by having its navigational devices, guides, or

menus nominally provided by an affiliate. By this statement, we meant that where an open video system operator provides no navigational device, guide or menu of its own, its affiliate's navigational device, guide or menu will be subject to the requirements of Section 653(b)(1)(E) even though such services are not formally provided by the open video system operator. We therefore will continue to apply the non-discrimination requirements of Section 653(b)(1)(E) to the open video system operator's affiliate where the affiliate provides a navigational device, guide or menu and the operator does not.

65. Second, if an open video system operator permits video programming providers, including its affiliate, to develop and use their own navigational devices, the operator must create an electronic menu or guide that all video programming providers must carry containing a non-discriminatory listing of programming providers or programming services available on the system. These menus or guides should also inform the viewer how to obtain additional information on each of the services listed. If an operator provides a system-wide menu or guide that meets these requirements, its programming affiliate may create its own menu or guide without being subject to the requirements of Section 653(b)(1)(E).

66. Third, an open video system operator may not require programming providers to develop and/or use their own navigational devices. Upon request, such programming providers must have access to the navigational device used by the open video system operator or its affiliate. Thus, for example, an open video system operator may not require a subscriber of its affiliated programming package to purchase a second set-top box in order to receive service from an unaffiliated programming provider that does not wish to use its own set-top box. An open video system operator need not physically integrate such programming providers into its affiliated programming package, or list such programming providers on its affiliate's guide or menu, so long as it meets the requirement set forth in the *Second Report and Order* that no programming service on its navigational device be more difficult to select than any other programming service.

H. Dispute Resolution

67. We disagree with the Alliance for Community Media, et al. that not mandating public disclosure and filing of carriage contracts will result in economic inefficiency. Economic efficiency is promoted by increased competition. Open video system operators generally will be new entrants into markets that, although characterized by a degree of competition, have relatively few sellers of channel capacity over which video programming may be offered to subscribers. In such markets, increased competition is promoted when sellers of capacity, such as open video system operators, can negotiate contracts privately with individual buyers (i.e., video programming providers), and rival sellers cannot immediately match the contracts' terms and conditions. Thus, our rules are designed to increase economic efficiency by promoting competition in video programming carriage markets.

68. We believe that the National League of Cities, et al. raise valid concerns that would-be complainants may lack sufficient information to file a complaint under our pleading rules. We believe it appropriate to give unaffiliated programming providers seeking carriage on open video systems some access to other programmer's carriage rates under certain circumstances. To ensure that the open video system operator provides useful information to the would-be complainant, we clarify that the preliminary rate estimates must include, upon request, all information needed to calculate the average rate paid by the unaffiliated programmers receiving carriage on the system, including the information needed for any weighting of the individual carriage rates that the operator has included in the average rate. This information may be made available subject to a reasonable non-disclosure agreement. In addition, we reiterate that the operator's carriage contracts may be subject to discovery as part of the complaint procedure.

I. Joint Marketing, Bundling and Structural Separation

69. *Joint Marketing.* We again decline to adopt NCTA's proposed restriction on joint marketing. While we agree that Congress' silence is not determinative, in light of Congress' silence on the issue, we believe that the burden is on those proposing joint marketing restrictions to demonstrate that such restrictions are necessary. NCTA requests that open video system operators be required to inform incoming callers that other video service providers exist in the area. To justify such a requirement, NCTA, at a minimum, would have to make some showing that consumers otherwise would likely be unaware of the existence of other video service options, such as cable service. NCTA made no such showing in its initial comments and has presented no new evidence here. In the absence of record evidence, the Commission declines to find that consumers would be unaware of the existence of other video providers such as cable, especially since cable currently accounts for 91% of multichannel video programming subscribers nationally, and passes 96% of all television households. NCTA's petition is denied.

70. *Bundling.* AT&T and NCTA's concerns were considered and addressed in the *Second Report and Order.* They adduce no new evidence here, nor have they explained why the safeguards adopted by the Commission are inadequate to protect consumers' interests. The petitions for reconsideration are denied. On our own motion, we will correct a typographical error in our rule regarding the bundling of video and local exchange services. The current text provides, in part, that any local exchange carrier offering a bundled package must impute the unbundled tariff rate for the ''unregulated service.'' The rule will be corrected to be consistent with the text of the *Second Report and Order,* which states that a bundled package must impute the unbundled tariff rate for the ''regulated service.''

71. *Structural Separation.* We deny the motions of NCTA and the Alliance for Community Media, et al. to reconsider our decision in the *Second Report and Order,* and accordingly decline to impose a separate affiliate requirement. First, while both NCTA and the Alliance for Community Media, et al. point out that the Commission need not be restricted by congressional silence, they both fail to address the point raised in the *Second Report and Order* that Congress expressly directed in Section 653 that Title II requirements not be applied to ''the establishment and operation of an open video system.'' In addition, as we stated in the *Second Report and Order,* we believe that the Commission's Part 64 cost allocation rules and any amendment thereto will adequately protect regulated telephone ratepayers from a misallocation of costs that could lead to excessive telephone rates. Neither NCTA nor the Alliance for Community Media, et al. has advanced any new evidence or substantive arguments that a separate affiliate requirement is a necessary additional safeguard to protect against cross-subsidization.

IV. Regulatory Flexibility Act Analysis

72. 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 *Report and Order and Notice of Proposed Rulemaking* (''NPRM'') in CS Docket No. 96–46 and CC Docket No. 87–266 (terminated) (In the Matter of Implementation of Section 302 of the Telecommunications Act of 1996—Open Video Systems), FCC 96–99, 61 FR 10496 (March 14, 1996), released March 11, 1996. The Commission sought written public comments on the proposals in the *NPRM* including comments on the IRFA, and addressed these responses in the *Second Report and Order* in CS Docket No. 96–46 (In the Matter of Implementation of Section 302 of the Telecommunications Act of 1996—Open Video Systems), FCC 96–249, 61 FR 28698 (June 5, 1996), released June 3, 1996. No IRFA was attached to the *Second Report and Order* because the *Second Report and Order* only adopted final regulations and did not propose regulations. This Final Regulatory Flexibility Analysis (FRFA) therefore addresses the impact of regulations on small entities only as adopted or modified in this *Third Report and Order and Second Order on Reconsideration* and not as adopted or modified in earlier stages of this rulemaking proceeding. The FRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law No. 104–121, 110 Stat. 847.

73. *Need for Action and Objectives of the Rule.* The rulemaking implements Section 302 of the Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56. Section 302 directs the Commission to promulgate regulations governing the establishment and operation of open video systems. The purposes of this action are to establish a structure for open video systems that provides competitive benefits, including market entry by new service providers, enhanced competition, streamlined regulation, investment in infrastructure and technology, diversity of video programming choices and increased consumer choice.

74. *Summary and Assessment of Issues Raised by Petitioners in Response to the IRFA.* With respect to the *Third Report and Order,* several parties filed comments in the *Cable Reform Proceeding* and also filed petitions for reconsideration of the *Second Report and Order* regarding the definition of the term ''affiliate'' in the context of the new statutory provisions for open video systems. These comments and the Commission's report are summarized in Section III, above. As mentioned, no IRFA was attached to the *Second Report and Order.* In petitions for reconsideration of the *Second Report and Order,* however, some parties raised issues that generally could involve small entities. For example, local cities urge the Commission to: (1) further ensure that local governments receive notification of an operator's intent to establish an open video system, by requiring an operator to serve a copy of FCC Form 1275 on all affected local municipalities; and (3) require an open video system operator to match, rather than share, the local cable operator's PEG access obligations. We grant reconsideration of these issues. Other parties, including potentially small business video programming providers, urge the Commission to enhance programming providers' ability to access information necessary to pursue a rate complaint against an open video system operator. We also grant reconsideration on this issue. Local television stations urge the Commission to require that open video system operators tailor the distribution of must-carry signals to the parts of their system that are located within a station's local service area so that stations electing must-carry status do not have to reimburse the operators for extensive copyright fees that may result from carriage beyond their local service areas. We grant reconsideration on this point.

75. *Description and Estimate of the Number of Small Entities Impacted.* The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction,'' and the same meaning as the term ''small business concern'' under Section 3 of the Small Business Act. A small concern is 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 rules we adopt today apply to municipalities, television stations, and business video programming providers. The rules also apply to entities that are likely to become open video system operators, including local exchange carriers and cable systems.

76. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by this Order.

77. *Cable Systems:* SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.

78. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers; thus, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by this Order.

79. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,

we cannot estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

80. *Municipalities:* The term ''small governmental jurisdiction'' is defined as ''governments of * * * districts, with a population of less than fifty thousand.'' There are 85,006 governmental entities in the United States. This number includes such entities as states, counties, cities, utility districts and school districts. We note that any official actions with respect to open video systems will typically be undertaken by LFAs, which primarily consist of counties, cities and towns. Of the 85,006 governmental entities, 38,978 are counties, cities and towns. The remainder are primarily utility districts, school districts, and states, which typically are not LFAs. Of the 38,978 counties, cities and towns, 37,566 or 96%, have populations of fewer than 50,000. Thus, approximately 37,500 ''small governmental jurisdictions'' may be affected by the rules adopted in this *Third Report and Order and Second Order on Reconsideration*.

81. *Television Stations:* The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts. 13 CFR § 121.201. According to the Census Bureau, in 1992, there were 1,155 out of 1,478 operating television stations reported revenues of less than $10 million for 1992. This represents 78% of all television stations, including non-commercial stations. The Census Bureau does not separate the revenue data by commercial and non-commercial stations in this report. Neither does it allow us to determine the number of stations with a maximum of 10.5 million dollars in annual receipts. Census data also indicates that 81 percent of operating firms (that owned at least one television station) had revenues of less than 10 million dollars.

82. Based on the foregoing worst case 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 a worst case 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 tentatively 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.

83. *Video Programming Providers:* Open video systems are an entirely new framework for delivering video programming to consumers. No open video systems have yet been certified to operate. Therefore, it is not possible at this time to estimate the size or number of video programming providers that may seek capacity on open video systems. We anticipate that two types of video programming providers may arise: (1) video programming providers seeking to utilize an open video system to offer a package of individual programming services via open video systems to subscribers; and (2) providers seeking to offer only one programming service. It is not possible to estimate the impact on or the number of video programming providers in the first category because no such entities exist. With respect to the second category, however, we believe that small cable programming services may provide a reasonable substitute. The Census Bureau category most similar to cable programming services is ''motion picture and video tape production.'' SIC Code 7812. Under this category, entities with less than $21.5 million in annual receipts are defined as small motion picture and video tape production entities. There are a total of 7,265 motion picture and video tape production entities; of those, 7,002 have annual receipts of less than $24.5 million. The figures are not broken down further. We estimate that approximately 7,000 small cable programming services, or video programming providers, may be affected by the rules adopted in this Order. The Census Bureau data does not reflect a likely significant number of small, independent motion picture and video tape production companies. It is not possible at this time to estimate this number because no publicly available data is available that is specific to such entities. We therefore estimate that a minimum of 7,000 small cable programming services, or video programming providers, may be affected by this rule.

84. *Reporting, Recordkeeping and Other Compliance Requirements.* The following addresses the requirements of regulations adopted, amended, modified or clarified on reconsideration in the *Third Report and Order and Second Order on Reconsideration*. We adopt a definition of ''affiliate'' that will impact open video system operators and their affiliates, including open video system operators that are small entities. A primary effect of this rule concerns situations where demand for carriage exceeds the open video system's channel capacity, where the open video system operator and its affiliates are prohibited from selecting the video programming services for carriage on more than one-third of the activated channel capacity on its system. We revise FCC Form 1275 to require that applicants to become open video system operators, including applicants that are small businesses, list the names of the local communities in which they intend to operate. Listing the names of the communities will neither require any specialized skills nor impose significant new burdens.

85. We modify our regulations to require that an open video system applicant, including those that are small entities, serve a copy of its FCC Form 1275 on all affected local communities on or before the date it is filed with the Commission. Merely serving the form on all affected local communities will not require any specialized skills. We modify our regulations to require that advertising availabilities (''ad avails'') associated with a programming service carried by both the open video system operator or its affiliated video programming provider and an unaffiliated provider must be shared in an equitable manner. This may impose burdens on open video system operators, including those that are small entities, because an operator must now share the revenues or other benefits of such ad avails with unaffiliated entities, rather than keeping all such revenues. We find that implementing this approach requires no specialized skills.

86. We modify our regulations to permit an open video system operator to recover the gross revenues fee from all video programming providers using the platform on a proportional basis as an element of the carriage rate. This approach may impose additional burdens on video programming providers, including those that are small entities, because the carriage rate may be increased to reflect the open video system operator's gross revenues fees. We find that implementing this approach requires no specialized skills. We modify our regulations to require open video system operators, in the absence of a negotiated agreement, to match, rather than share, all public, educational and governmental (''PEG'')

access financial contributions of the local cable operator. This matching requirement could result in additional financial burdens on open video system operators, including those that are small entities, because matching the cable operator's PEG access financial contributions will be more costly in many situations than merely sharing the cable operator's contributions towards PEG access services, facilities and equipment, as permitted under the previous approach. We find that implementing this approach requires no specialized skills.

87. We modify our regulations so that, in areas where a cable franchise previously existed, the local franchise authority will be permitted, absent a negotiated agreement, to elect either: (1) to maintain the previously existing PEG access requirements; or (2) to have the open video system operator's PEG access obligations determined by comparison to the nearest operating cable system that has a commitment to provide PEG access and that serves a franchise area with a similar population size. Every 15 years thereafter, the LFA is permitted to make a similar election. This requirement could impose new burdens on open video system operators, including those that are small entities, because an operator's PEG access obligations may be increased when compared to the nearest operating cable system that has a commitment to provide PEG access and that serves a franchise area with a similar population size. The order requires a broadcast station to make the same election for open video systems and cable systems in the same geographic area, unless the overlapping open video system is unable to deliver appropriate signals in conformance with the broadcast station's elections for all cable systems serving the same geographic area. We estimate that this requirement will have an impact on some broadcast stations. We anticipate that this requirement will not require any more professional skills than are required to make such elections and notify operators in the context of cable systems.

88. The order requires an open video system operator to pay for any additional copyright fees incurred as a result of carrying a local signal outside of its local service area. We estimate that this requirement may affect a limited number of large open video system operators. We anticipate that distribution of signals outside of a local market will most likely occur on large systems that overlap several markets. If additional copyright fees are incurred by an open video system operator, we do not anticipate that the operator will have to use any professional skills beyond those already used to comply with the copyright rules. The order holds an open video system operator responsible for any violation of our sports exclusivity rules. We estimate that this requirement will have an impact on open video system operators and programmers, but will not require the use of any additional professional skills.

89. We allow open video system operators to permit programming providers, including those affiliated with the open video system, to use their own navigational devices, subject to certain conditions. If the open video system operator permits programming providers to use their own navigational devices, the open video system operator must provide a nondiscriminatory guide or menu that all programming providers must carry, showing all programming available on the systems. We estimate that the requirement could result in additional burdens on open video system operators including small open video system operators. We find that implementing this approach requires no specialized skills. We clarify our regulations to require that the preliminary rate estimate provided by an open video system operator to video programming providers must include, upon request, all information needed to calculate the average rate paid by unaffiliated programming providers receiving carriage on the system, including the information needed for any weighting of the individual carriage rates that the operator has included in the average rate. This clarification may impose new burdens on open video system operators, including those that are small entities, because an open video system operator may have to prepare this information earlier than under the previous approach.

90. *Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Rejected.* This section analyzes the impact on small entities in the contexts of regulations adopted, amended, modified or clarified in this *Third Report and Order and Second Order on Reconsideration.* With respect to the definition of affiliate, we adopt the attribution standard that applies in the cable program access context. The factual, legal and policy reasons are set forth in Section II, above. The definition of affiliate we adopt will create opportunities for unaffiliated programmers, many of which may be small entities, by promoting diversity of video programming sources. We rejected several alternatives to this definition of affiliate, as described in Section II, above. Requiring applicants to list the names of all local communities in which they intend to operate will not impose significant new burdens on applicants for the reasons stated above and will reduce burdens on the affected local communities, including those that are small entities. This approach will also reduce the burdens on open video system operators by reducing the potential for confusion over which local communities will be served by the open video system.

91. Requiring service of FCC Form 1275 on local communities, as described above, will impose only minimal new burdens on open video system operators, including those that are small entities. These burdens are outweighed by the benefits to local communities, such as ensuring that a local community without ready access to the Internet or the Commission's Public Notices will be made aware of the applicant's filing. The factual, legal and policy reasons are described in Section III.B. This approach will reduce the burdens on open video system operators by reducing the potential for confusion over which local communities will be served by the open video system. The primary significant alternative is not requiring such service, but as stated, we find that the benefits to local communities outweigh any minimal burdens of complying with this rule. Requiring that ad avails associated with a programming service carried by both the open video system operator or its affiliated video programming provider and an unaffiliated provider be shared in an equitable manner may impose burdens on open video system operators, including those that are small entities. Such burdens are described in the preceeding section of this FRFA. However, we find these burdens are outweighed by the benefits of this requirement, which include providing unaffiliated video programming providers with an equitable share of income from ad avails and preventing the open video system operator or its affiliate from having a significant financial advantage over unaffiliated video programming providers. The factual, legal and policy reasons are described in Section III.C. We reduce the burdens on open video system operators by specifying examples of acceptable methods of sharing ad avails, including apportioning the relevant revenues or apportioning the rights to sell the avails themselves. The primary significant alternative is maintaining our current rules which do not require such sharing; however, as stated, we find that the benefits to unaffiliated

video programming providers outweigh the burdens of complying with this rule.

92. Modifying our rules to permit an open video system operator to recover the gross revenues fee from all video programming providers using the platform on a proportional basis as an element of the carriage rate may impose additional burdens on video programming providers, including those that are small entities. However, we find that these burdens, as described above, are outweighed by the benefits to open video system operators and are in the interests of competition. Permitting this recoupment of the gross revenues fee should promote competition on the platform among video programming providers by not disadvantaging any particular video programming provider with respect to the payment of the gross revenues fee. The factual, legal and policy reasons for this approach are described above in Section III.E. This approach will reduce burdens on open video system operators by permitting them to recoup a proportion of these costs from video programming providers. The primary significant alternative we rejected is maintaining our current regulations which may have permitted unaffiliated video programming providers to avoid paying any share of the gross revenues fee; however, as stated, we find that the benefits to open video system operators outweigh the burdens of this approach on video programming providers. Requiring open video system operators to match, rather than share, all PEG access financial contributions of the local cable operator may impose burdens on open video system operators, including those that are small entities. These burdens are described in the preceeding section of this FRFA. We find that these burdens are outweighed by the benefits of this revised approach. The factual, policy and legal reasons for this approach are described in Section III.F. We believe that this approach may reduce burdens on open video system operators by providing further certainty as to their PEG access financial obligations. Significant alternatives we rejected include: (1) maintaining our current rules which permit an open video system operator to share the PEG access contributions. Generally, we rejected this alternative because we find that the matching principle more accurately fulfills the 1996 Act's mandate to impose PEG access obligations on open video system operators that are ''no greater or lesser'' than those imposed on cable operators.

93. Modifying a local franchise authority's ability to make an election concerning the PEG access obligations of an open video system operator, as described in the preceeding section of this FRFA, may impose additional burdens on open video system operators, including those that are small entities. These burdens are described above. However, we find that these burdens are outweighed by the benefits of this approach, which include preventing PEG access obligations from being frozen in perpetuity, thereby providing significant benefits to local franchise areas and communities. The factual, policy and legal reasons for this approach are described above in Section III.F. This approach may reduce burdens on local communities by permitting them to negotiate with open video system operators with respect to PEG access obligations, and on open video system operators by providing them certainty as to their PEG access obligations for a period of up to 15 years. The primary significant alternative we rejected is maintaining our current regulations which do not permit local franchise areas to make this election; however, as stated, we find that the benefits to local communities outweigh the burdens of this approach on open video system operators. The rule which requires a broadcast station to make the same election for open video systems and cable systems in the same geographic area, unless the overlapping open video system is unable to deliver appropriate signals in conformance with the broadcast station's elections for all cable systems serving the same geographic area, may impose a burden on broadcast stations. The policy, factual and legal reasons for adopting this final rule are set forth in Section III.F.2.b. of this Order. The rule adopted in this order may reduce burdens on both open video system operators and television stations by providing further certainty with respect to the must-carry status of television stations.

94. The rule which requires an open video system operator to pay for any additional copyright fees incurred as a result of carrying a local station beyond its local market area may impose a burden on open video system operators. It has not been necessary to take significant steps to minimize the burden on small open video system operators because we do not believe that this rule is likely to affect many open video systems and especially not smaller open video systems, because it will only apply to open video systems capable of carrying broadcast signals beyond their local service areas. The factual policies and legal reasons for adopting this final rule are set forth in Section III.F.2.b. Any burden on open video system operators is outweighed by the benefit to broadcast stations, especially small stations that might not be able to elect must-carry status if they were subject to copyright fees in distant markets. The rule which holds an open video system operator responsible for any violation of our sports exclusivity rules may impose a burden on open video system operators. This burden is justified by the interest in protecting exclusive rights to sports programming. The factual policies and legal reasons for adopting this final rule are set forth in Section III.F.4.b. The rule adopted in this order applies our sports exclusivity rules to open video systems more fairly than the Commission's previous rule for the reasons cited in Section III.F.4.b.

95. Allowing open video system operators to permit programming providers, including those affiliated with the open video system operator, to use their own navigational devices subject to certain conditions may impact open video system operators and their affiliates, including those that are small entities. If an operator permits programming providers, including its affiliate, to develop their own navigational devices, the operator must create an electronic menu or guide containing a non-discriminatory listing of programming providers or programming services available on the system that every programming provider must carry. The factual and policy reasons for adopting the final rule are found in Section III.G., above. We believe that this rule minimizes burdens on open video system operators and their programming affiliates, by allowing the affiliated programmers the flexibility to develop and use their own navigational devices, guides and menus. However, under the rule adopted, programming providers cannot be required to use their own navigational devices. Such providers must, upon request, have access to the navigational device used by the open video system operator or its affiliate. This requirement can help minimize burdens on small programming providers by allowing them access to the navigational device used by the open video system operator or its affiliate. Requiring that the preliminary rate estimate provided by an open video system operator to video programming providers include, upon request, all information needed to calculate the average rate paid by unaffiliated programming providers receiving carriage on the system, including the information needed for any weighting of the individual carriage rates that the operator has included in

the average rate, may impose burdens on open video system operator, including those that are small entities. These burdens are described in the preceeding section of this FRFA. However, we find that these burdens are outweighed by the benefits of this clarification, which include providing an unaffiliated video programming provider with relevant information regarding whether to pursue a rate complaint against an open video system operator. The factual, policy and legal reasons are described above in Section III.H. The primary significant alternative rejected by the Commission is to maintain our current rules which do not require a system operator's provision of such information upon request but only in formal discovery; however, as stated, we find that the benefits to unaffiliated video programming providers outweigh the burdens of complying with this rule.

96. *Report to Congress.* The Commission shall send a copy of this FRFA, along with this *Third Report and Order and Second Order on Reconsideration,* in a report to Congress pursuant to the SBREFA, 5 U.S.C. § 801(a)910(A). A copy of this FRFA will also be published in the Federal Register.

V. Paperwork Reduction Act of 1995 Analysis

97. The requirements adopted in the *Third Report and Order and Second Order on Reconsideration* have been analyzed with respect to the Paperwork Reduction Act of 1995 (the ''1995 Act'') and found to impose new or modified information collection requirements on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget (''OMB'') as prescribed by the 1995 Act. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in this *Third Report and Order and Second Order on Reconsideration* as required by the 1995 Act. OMB comments are due October 21, 1996. Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

98. Written comments by the public on the proposed and/or modified information collections are due on or before September 20, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before October 21, 1996. A copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236, NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov. For additional information concerning the information collections contained herein contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

VI. Ordering Clauses

99. *Accordingly, it is ordered* that, pursuant to Sections 4(i), 4(j), 303(r), and 653 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 573 the rules, requirements and policies discussed in this *Third Report and Order and Second Order on Reconsideration* ARE ADOPTED and Sections 76.1000 and 76.1500 through 76.1515 of the Commission's rules, 47 CFR §§ 76.1000 and 76.1500 through 1515, ARE AMENDED as set forth below.

100. *It is further ordered* that, pursuant to Sections 4(i), 4(j), 303(r), and 653 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 573 the rules, the Petitions for Reconsideration set forth in Appendix A are *granted in part* and *denied in part,* as provided herein.

101. *It is further ordered* that the requirements and regulations established in this decision shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than October 21, 1996. The Commission will issue a document at such time to notify parties that the regulations established in this decision are effective.

102. *It is further ordered* that the Motion to Accept Late-Filed Opposition filed by the Telephone Joint Petitioners is *hereby granted.*

103. *It is further ordered* that the Secretary shall send a copy of this *Third Report and Order and Second Order on Reconsideration* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

List of Subjects 47 CFR Part 76

Cable television.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Rule Changes

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.1500 is amended by redesignating paragraph (g) as paragraph (h) and adding new paragraph (g) to read as follows:

§ 76.1500 Definitions.

* * * * *

(g) *Affiliate.* For purposes of determining whether a party is an ''affiliate'' as used in this subpart, the definitions contained in the notes to § 76.501 shall be used, provided, however that:

(1) The single majority shareholder provisions of Note 2(b) to § 76.501 and the limited partner insulation provisions of Note 2(g) to § 76.501 shall not apply; and

(2) The provisions of Note 2(a) to § 76.501 regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

* * * * *

3. Section 76.1502 is amended by revising paragraphs (c)(6) and (d) and by adding paragraph (e) to read as follows:

§ 76.1502 Certification.

* * * * *

(c) * * *

(6) A list of the names of the anticipated local communities to be served upon completion of the system;

* * * * *

(d) On or before the date an FCC Form 1275 is filed with the Commission, the applicant must serve a copy of its filing

on all local communities identified pursuant to paragraph (c)(6) of this section and must include a statement informing the local communities of the Commission's requirements in paragraph (e) of this section for filing oppositions and comments. Service by mail is complete upon mailing, but if mailed, the served documents must be postmarked at least three days prior to the filing of the FCC Form 1275 with the Commission.

(e) Comments or oppositions to a certification must be filed within five days of the Commission's receipt of the certification and must be served on the party that filed the certification. If the Commission does not disapprove certification within ten days after receipt of an applicant's request, the certification will be deemed approved. If disapproved, the applicant may file a revised certification or refile its original submission with a statement addressing the issues in dispute. Such refilings must be served on any objecting party or parties and on all local communities in which the applicant intends to operate.

4. Section 76.1503 is amended by removing paragraph (c)(2)(iv)(C) and adding new paragraph (c)(2)(v) to read as follows:

§ 76.1503 Carriage of video programming providers on open video systems.

* * * * *

(c) * * *

(2) * * *

(v) Notwithstanding the general prohibition on an open video system operator's discrimination among video programming providers contained in paragraph (a) of this section, a competing, in-region cable operator or its affiliate(s) that offers cable service to subscribers located in the service area of an open video system shall not be entitled to obtain capacity on such an open video system, except:

(A) Where the operator of an open video system determines that granting access to the competing, in-region cable operator is in its interests; or

(B) Where a showing is made that facilities-based competition will not be significantly impeded.

Note to paragraph (c)(2)(v)(B): The Commission finds that facilities-based competition will not be significantly impeded, for example, where:

(1) The competing, in-region cable operator and affiliated systems offer service to less than 20% of the households passed by the open video system; and

(2) The competing, in-region cable operator and affiliated systems provide cable service to a total of less than 17,000 subscribers within the open video system's service area.

* * * * *

5. Section 76.1504 is amended by revising paragraph (e) to read as follows:

§ 76.1504 Rates, terms and conditions for carriage on open video systems.

* * * * *

(e) *Determining just and reasonable rates subject to complaints pursuant to the imputed rate approach or other market based approach.* Carriage rates subject to complaint shall be found just and reasonable if one of the two following tests are met:

(1) The imputed rate will reflect what the open video system operator, or its affiliate, ''pays'' for carriage of its own programming. Use of this approach is appropriate in circumstances where the pricing is applicable to a new market entrant (the open video system operator) that will face competition from an existing incumbent provider (the incumbent cable operator), as opposed to circumstances where the pricing is used to establish a rate for an essential input service that is charged to a competing new entrant by an incumbent provider. With respect to new market entrants, an efficient component pricing model will produce rates that encourage market entry. If the carriage rate to an unaffiliated program provider surpasses what an operator earns from carrying its own programming, the rate can be presumed to exceed a just and reasonable level. An open video system operator's price to its subscribers will be determined by several separate costs components. One general category are those costs related to the creative development and production of programming. A second category are costs associated with packaging various programs for the open video system operator's offering. A third category related to the infrastructure or engineering costs identified with building and maintaining the open video system. Contained in each is a profit allowance attributed to the economic value of each component. When an open video system operator provides only carriage through its infrastructure, however, the programming and packaging flows from the independent program provider, who bears the cost. The open video system operator avoids programming and packaging costs, including profits. These avoided costs should not be reflected in the price charged an independent program provider for carriage. The imputed rate also seeks to recognize the loss of subscribers to the open video system operator's programming package resulting from carrying competing programming.

Note to paragraph (e)(1): Examples of specific ''avoided costs'' include:

(1) All amounts paid to studios, syndicators, networks or others, including but not limited to payments for programming and all related rights;

(2) Packaging, including marketing and other fees;

(3) Talent fees; and

(4) A reasonable overhead allowance for affiliated video service support.

(2) An open video system operator can demonstrate that its carriage service rates are just and reasonable through other market based approaches.

6. Section 76.1505 is amended by revising paragraphs (d)(1), (d)(4), (d)(6), the note to paragraph (d)(6), and (d)(8) to read as follows:

§ 76.1505 Public, educational and governmental access.

* * * * *

(d) * * *

(1) The open video system operator must satisfy the same public, educational and governmental access obligations as the local cable operator by providing the same amount of channel capacity for public, educational and governmental access and by matching the local cable operator's annual financial contributions towards public, educational and governmental access services, facilities and equipment that are actually used for public, educational and governmental access services, facilities and equipment. For in-kind contributions (e.g., cameras, production studios), the open video system operator may satisfy its statutory obligation by negotiating mutually agreeable terms with the local cable operator, so that public, educational and governmental access services to the community is improved or increased. If such terms cannot be agreed upon, the open video system operator must pay the local franchising authority the monetary equivalent of the local cable operator's depreciated in-kind contribution, or, in the case of facilities, the annual amortization value. Any matching contributions provided by the open video system operator must be used to fund activities arising under Section 611 of the Communications Act.

* * * * *

(4) The costs of connection to the cable operator's public, educational and governmental access channel feed shall be borne by the open video system operator. Such costs shall be counted towards the open video system operator's matching financial contributions set forth in paragraph (d)(4) of this section.

* * * * *

(6) Where there is no existing local cable operator, the open video system operator must make a reasonable

amount of channel capacity available for public, educational and governmental use, as well as provide reasonable support for services, facilities and equipment relating to such public, educational and governmental use. If a franchise agreement previously existed in that franchise area, the local franchising authority may elect either to impose the previously existing public, educational and governmental access obligations or determine the open video system operator's public, educational and governmental access obligations by comparison to the franchise agreement for the nearest operating cable system that has a commitment to provide public, educational and governmental access and that serves a franchise area with a similar population size. The local franchising authority shall be permitted to make a similar election every 15 years thereafter. Absent a previous franchise agreement, the open video system operator shall be required to provide channel capacity, services, facilities and equipment relating to public, educational and governmental access equivalent to that prescribed in the franchise agreement(s) for the nearest operating cable system with a commitment to provide public, educational and governmental access and that serves a franchise area with a similar population size.

Note to paragraph (d)(6): This paragraph shall apply, for example, if a cable operator converts its cable system to an open video system under § 76.1501.

* * * * *

(8) The open video system operator and/or the local franchising authority may file a complaint with the Commission, pursuant to our dispute resolution procedures set forth in § 76.1514, if the open video system operator and the local franchising authority cannot agree as to the application of the Commission's rules regarding the open video system operator's public, educational and governmental access obligations under paragraph (d) of this section.

* * * * *

7. Section 76.1506 is amended by revising paragraphs (d), (l)(3) and (m)(2) to read as follows:

§ 76.1506 Carriage of television broadcast signals.

* * * * *

(d) *Definitions applicable to the must-carry rules.* Section 76.55 shall apply to all open video systems in accordance with the provisions contained in this section. Any provision of § 76.55 that refers to a ''cable system'' shall apply to an open video system. Any provision of § 76.55 that refers to a ''cable operator'' shall apply to an open video system operator. Any provision of § 76.55 that refers to the ''principal headend'' of a cable system as defined in § 76.5(pp) shall apply to the equivalent of the principal headend of an open video system. Any provision of § 76.55 that refers to a ''franchise area'' shall apply to the service area of an open video system. The provisions of § 76.55 that permit cable operators to refuse carriage of signals considered distant signals for copyright purposes shall not apply to open video system operators. If an open video system operator cannot limit its distribution of must-carry signals to the local service area of broadcast stations as used in 17 U.S.C. 111(d), it will be liable for any increase in copyright fees assessed for distant signal carriage under 17 U.S.C. 111.

* * * * *

(l) * * *

(3) Television broadcast stations are required to make the same election for open video systems and cable systems serving the same geographic area, unless the overlapping open video system is unable to deliver appropriate signals in conformance with the broadcast station's elections for all cable systems serving the same geographic area.

* * * * *

(m) * * *

(2) Notification of programming to be deleted pursuant to this section shall be served on the open video system operator. The open video system operator shall make all notifications immediately available to the appropriate video programming providers on its open video system. Operators may effect the deletion of signals for which they have received deletion notices unless they receive notice within a reasonable time from the appropriate programming provider that the rights claimed are invalid. The open video system operator shall not delete signals for which it has received notice from the programming provider that the rights claimed are invalid. An open video system operator shall be subject to sanctions for any violation of this subpart. An open video system operator may require indemnification as a condition of carriage for any sanctions it may incur in reliance on a programmer's claim that certain exclusive or non-duplication rights are invalid.

* * * * *

8. Section 76.1511 is revised to read as follows:

§ 76.1511 Fees.

An open video system operator may be subject to the payment of fees on the gross revenues of the operator for the provision of cable service imposed by a local franchising authority or other governmental entity, in lieu of the franchise fees permitted under Section 622 of the Communications Act. Local governments shall have the authority to assess and receive the gross revenue fee. Gross revenues under this paragraph means all gross revenues received by an open video system operator or its affiliates, including all revenues received from subscribers and all carriage revenues received from unaffiliated video programming providers. In addition gross revenues under this paragraph includes any advertising revenues received by an open video system operator or its affiliates in connection with the provision of video programming, where such revenues are included in the calculation of the incumbent cable operator's cable franchise fee. Gross revenues does not include revenues collected by unaffiliated video programming providers, such as subscriber or advertising revenues. Any gross revenues fee that the open video system operator or its affiliate collects from subscribers or video programming providers shall be excluded from gross revenues. An operator of an open video system or any programming provider may designate that portion of a subscriber's bill attributable to the fee as a separate item on the bill. An operator of an open video system may recover the gross revenue fee from programming providers on a proportional basis as an element of the carriage rate.

9. Section 76.1512 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 76.1512 Programming information.

* * * * *

(b) In accordance with paragraph (a) of this section:

(1) An open video system operator shall not discriminate in favor of itself or its affiliate on any navigational device, guide or menu;

(2) An open video system operator shall not omit television broadcast stations or other unaffiliated video programming services carried on the open video system from any navigational device, guide (electronic or paper) or menu;

(3) An open video system operator shall not restrict a video programming provider's ability to use part of the provider's channel capacity to provide an individualized guide or menu to the provider's subscribers;

(4) Where an open video system operator provides no navigational device, guide or menu, its affiliate's

navigational device, guide or menu shall be subject to the requirements of Section 653(b)(1)(E) of the Communications Act;

(5) An open video system operator may permit video programming providers, including its affiliate, to develop and use their own navigational devices. If an open video system operator permits video programming providers, including its affiliate, to develop and use their own navigational devices, the operator must create an electronic menu or guide that all video programming providers must carry containing a non-discriminatory listing of programming providers or programming services available on the system and informing the viewer how to obtain additional information on each of the services listed;

(6) An open video system operator must grant access, for programming providers that do not wish to use their own navigational device, to the navigational device used by the open video system operator or its affiliate; and

(7) If an operator provides an electronic guide or menu that complies with paragraph (b)(5) of this section, its programming affiliate may create its own menu or guide without being subject to the requirements of Section 653(b)(1)(E) of the Communications Act.

(c) An open video system operator shall ensure that video programming providers or copyright holders (or both) are able to suitably and uniquely identify their programming services to subscribers.

(d) An open video system operator shall transmit programming identification without change or alteration if such identification is transmitted as part of the programming signal.

10. Section 76.1513 is amended by adding a note following paragraph (e)(1)(viii) to read as follows:

§ 76.1513 Dispute resolution.

* * * * *

(e) * * *

(1) * * *

(viii) * * *

Note to paragraph (e)(1)(viii): Upon request by a complainant, the preliminary carriage rate estimate shall include a calculation of the average of the carriage rates paid by the unaffiliated video programming providers receiving carriage from the open video system operator, including the information needed for any weighting of the individual carriage rates that the operator has included in the average rate.

* * * * *

11. Section 76.1514 is amended by revising paragraph (b) to read as follows:

§ 76.1514 Bundling of video and local exchange services.

* * * * *

(b) Any local exchange carrier offering such a package must impute the unbundled tariff rate for the regulated service.

[FR Doc. 96–21262 Filed 8–20–96; 8:45 am]

BILLING CODE 6712–01–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 Three Plants From the Island of Nihoa, Hawaii

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 three plants: *Amaranthus brownii* (no common name (NCN)), *Pritchardia remota* (loulu), and *Schiedea verticillata* (NCN). These three species are endemic to the island of Nihoa, Hawaiian Islands. Two of the species are threatened by competition with the one widespread alien plant that has established on the island. Two of the species grow in steep, rocky habitats which are easily disturbed. Because of the small numbers of existing individuals and populations and their narrow distributions, which are limited to the 0.25 square mile (sq mi) (0.65 sq kilometer (km)) island, these species are subject to a danger of extinction and/or reduced reproductive vigor. This final rule implements the Federal protection provisions provided by the Act.

EFFECTIVE DATE: September 20, 1996.

ADDRESSES: The complete file for this 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

Amaranthus brownii, *Pritchardia remota*, and *Schiedea verticillata* are endemic to the island of Nihoa, Hawaii. Nihoa is the largest and highest of the uninhabited islands of Hawaii. The Hawaiian Archipelago is made up of 132 islands, reefs, and shoals forming an arch 1,600 statute mi (2,580 km) long in the middle of the Pacific Ocean. The eight major Hawaiian Islands occur in the southeast 400 mi (650 km) of the arch. Northwest of Niihau, small islands and atolls are widely scattered over the remaining 1,200 mi (1,930 km) of the arch and make up the Northwestern Hawaiian Islands (NWHI) (formerly called the Leeward Islands) (Department of Geography 1983, Macdonald *et al.* 1983, Walker 1990). Nihoa, the largest of the lava islands west of Niihau, is the closest to the main islands, situated 170 mi (275 km) northwest of Kauai. Over many years, waves driven by prevailing trade winds eroded the island into its current shape, which is the remnant southwest quadrant of the original huge volcanic cone. The east, west, and north sides of Nihoa are sheer cliffs, and the south coast comprises low cliffs with rock benches and one small beach (Cleghorn 1987, Gagne and Conant 1983, Macdonald *et al.* 1983). The island, formed about 7.5 million years ago by a single shield volcano, now measures only 0.85 mi (1.4 km) long, an average of 0.3 mi (0.5 km) wide, and 156 acres (ac) (63.1 hectares (ha)) in area (Macdonald *et al.* 1983, Walker 1990). The highest point, 896 feet (ft) (273 meters (m)) in elevation (Conant 1985), is located at one of the two peaks on Nihoa, which are separated by a depression dissected by six valleys (Macdonald *et al.* 1983). The elevation of the island is not sufficient to increase precipitation from that which would fall on a flat island, and the yearly rainfall of 20 to 30 inches (in) (508 to 762 millimeters (mm)) per year, usually concentrated in the winter months, is the result of unpredictable rain squalls passing over the island (Carlquist 1980, Cleghorn 1987). Valleys are deep and have little sediment, indicating that their streams were once powerful, but the only water on the island now is found in three freshwater seeps (Cleghorn 1987).

Nihoa, with the most diverse flora and fauna of any of the NWHI, presents a relatively intact low-elevation dryland ecosystem with a complement of native plants, arthropods, and birds (Gagne 1982). Such areas were probably common in the main Hawaiian Islands prior to their disturbance by Polynesian agricultural practices (Cuddihy and Stone 1990). Nihoa was first inhabited in the thirteenth century by a small group of Polynesian settlers who

terraced and cultivated most of the gently sloping area of the island, a total of 12 to 31 ac (4.9 to 12.5 ha) or 7.7 to 20 percent of the area of the island. Most of the island was unsuitable for cultivation, and habitation did not persist for a long period of time; therefore, much of the natural ecosystem remained intact (Cleghorn 1987, Emory 1928, Harrison 1990). Animals now found on or near Nihoa include—a small, resident population of Hawaiian monk seal (*Monachus schauinslandi*), a listed endangered species; green sea turtle (*Chelonia mydas*), a listed threatened species; 17 species of breeding seabirds; several migratory seabirds; 2 endemic land birds (Nihoa millerbird (*Acrocephalus familiaris*) and Nihoa finch (*Telespiza ultima*)), both listed endangered species; 6 species of endemic land snails; and 35 endemic and 26 indigenous arthropods, many only recently discovered.

A total of 26 vascular plant taxa have been found on Nihoa: Three species endemic to Nihoa—*Amaranthus brownii*, *Pritchardia remota* (loulu), and *Schiedea verticillata*; nine taxa endemic to the Hawaiian Islands—*Chamaesyce celastroides* var. *celastroides* ('akoko), *Chenopodium oahuense* ('aheahea), *Eragrostis variabilis* (kawelu), *Panicum torridum* (kakonakona), *Portulaca villosa* ('ihi), *Rumex albescens* (hu'ahu'ako), *Sesbania tomentosa* ('ohai), *Sicyos pachycarpus* (kupala), and *Solanum nelsonii* (popolo); eight taxa indigenous to Hawaii—*Boerhavia diffusa* (alena), *Heliotropium currassavicum* (seaside heliotrope), *Ipomoea indica* (koali 'awa), *Ipomoea pes-caprae* ssp. *brasiliensis* (pohuehue), *Portulaca lutea* ('ihi), *Sida fallax* ('ilima), *Solanum americanum* (glossy nightshade), and *Tribulus cistoides* (nohu); and six alien species which have naturalized in Hawaii—*Cenchrus echinatus* (common sandbur), *Nephrolepis multiflora* (sword fern), *Paspalum* sp., *Portulaca oleracea* (pigweed), *Setaria verticillata* (bristly foxtail), and *Tetragonia tetragonioides* (New Zealand spinach) (Conant 1985, Conant and Herbst 1983, Gagne and Conant 1983, Harrison 1990, Herbst 1977).

Bare rock and unvegetated soil make up about one-third of the surface of Nihoa. All vegetation is classified as being part of Coastal Communities, including Coastal Dry Communities and a Coastal Mesic Community. Coastal Dry Shrublands include two forms of 'Ilima (*Sida*) Shrubland—prostrate plants near the shore and erect plants in more sheltered sites. The 'Aweoweo (*Chenopodium* or 'aheahea) Coastal Shrubland includes 'aheahea and popolo as codominants, as well as 'ilima and several other less frequent species. The Loulu (*Pritchardia*) Coastal Forest, a type of Coastal Mesic Forest, contains *Pritchardia remota* as the only dominant (Gagne and Cuddihy 1990).

Nihoa is owned by the Federal government and is included within the boundaries of the City and County of Honolulu. Nihoa is part of the Hawaiian Islands National Wildlife Refuge, which is managed by the Service, and has been designated a Research Natural Area (Clapp *et al.* 1977; Conant 1985; Department of the Interior 1986a, 1986b; Harrison 1990; Honolulu 1988; Miller 1983).

Discussion of the Three Plant Species

Amaranthus brownii was first collected by Edward L. Caum during the Tanager Expedition in 1923. Erling Christophersen and Caum named it in honor of Dr. F.B.H. Brown in 1931.

Amaranthus brownii, a member of the amaranth family (Amaranthaceae), is an annual herb with leafy upright or ascending stems, 1 to 3 ft (30 to 90 centimeters (cm)) long. The slightly hairy, alternate leaves are long and narrow, 1.6 to 2.8 in (4 to 7 cm) long, 0.06 to 0.16 in (1.5 to 4 mm) wide, and more or less folded in half lengthwise. Flowers are either male or female, and both sexes are found on the same plant. The green flowers are subtended by two oval, bristle-tipped bracts about 0.04 in (1 mm) long and 0.03 in (0.7 mm) wide. Each flower has three bristle-tipped sepals which are lance-shaped and 0.05 in (1.3 mm) long by 0.03 in (0.8 mm) wide in male flowers and spatula-shaped and 0.03 to 0.04 in (0.8 to 1 mm) long by 0.01 to 0.02 in (0.2 to 0.5 mm) wide in female flowers. Male flowers have three stamens; female flowers have two stigmas. The flattened, oval fruit, which does not split open at maturity, is 0.03 to 0.04 in (0.8 to 1 mm) long and 0.02 to 0.03 in (0.6 to 0.8 mm) wide and contains one shiny, lens-shaped, reddish black seed. This species can be distinguished from other Hawaiian members of the genus by its spineless leaf axils, its linear leaves, and its fruit which does not split open when mature (Wagner *et al.* 1990).

When *Amaranthus brownii* was first collected in 1923, it was ''most common on the ridge leading to Millers Peak, but abundant also on the ridges to the east'' (Herbst 1977). The two known populations are separated by a distance of 0.25 mi (0.4 km) and contained approximately 35 plants—about 23 plants near Millers Peak and about a dozen plants in Middle Valley. Although the species was last reported in 1983, annual surveys by Service refuge staff have of necessity taken place well after this annual plant's normal growing season. During the dry summer months when surveys are conducted, individuals of *A. brownii* are difficult to distinguish from other desiccated herbaceous or seedling plants. The unusually dry conditions of the past several years are another probable factor in the lack of *A. brownii* reported. During this species' normal growing season of December through March, the seas are too rough to permit landing on Nihoa by survey personnel. The Service continues to attempt winter surveys of Nihoa with veteran field botanist Steve Perlman of the Hawaii Plant Conservation Center, who believes that the species is likely present during the wetter winter months. *Amaranthus brownii* typically grows on rocky outcrops in fully exposed locations at elevations between 390 and 700 ft (120 and 213 m). Associated species include 'aheahea, kakonakona, and kupala. Pigweed, an invasive alien species, is widespread on Nihoa and grows in habitat similar to *A. brownii*. Because it grows on rocky outcrops, *A. brownii* is more likely to be affected by substrate changes. Due to the small numbers of populations and individuals and its limited distribution, this species is threatened by extinction from naturally occurring events and/or reduced reproductive vigor. This species may have experienced a reduction in total numbers due to disturbances resulting from Polynesian settlement of Nihoa (Hawaii Heritage Program (HHP) 1990a1, 1990a2; Wagner *et al.* 1985, 1986, 1990; Kenneth McDermond and Elizabeth Flint, U.S. Fish and Wildlife Service (USFWS), *in litt.*, 1993; Steve Perlman, Hawaii Plant Conservation Center, pers. comm., 1996).

In 1858, Dr. Rooke brought seed of a palm from Nihoa and planted it on the palace grounds in Honolulu (Hillebrand 1888). A Hillebrand specimen, probably collected from this cultivated tree, was used by Odoardo Beccari (1890) to describe *Pritchardia remota*. Otto Kuntze transferred the species to other genera, resulting in *Washingtonia remota* (Kuntze 1891) and later *Eupritchardia remota* (Beccari and Rock 1921). In their 1921 monograph of the genus, Beccari and Joseph Rock included the species in *Pritchardia*, as do the authors of the current treatment (Read and Hodel 1990).

Pritchardia remota, a member of the palm family (Arecaceae), is a tree 13 to 16 ft (4 to 5 m) tall with a ringed, wavy trunk about 5.9 in (15 cm) in diameter. The rather ruffled, fan-shaped leaves are about 31 in (80 cm) in diameter and are somewhat waxy to pale green with a few

tiny scales on the lower surface. The flowering stalks, up to 12 in (30 cm) long, are branched and have flowers arranged spirally along the hairless stalks. Below each flower is a bract 0.08 to 0.1 in (2 to 3 mm) long. The flower consists of a cup-shaped, three-lobed calyx (fused sepals); three petals, each about 0.2 in (6 mm) long; six stamens; and a three-lobed stigma. The pale greenish brown fruit is almost globose, 0.7 to 0.8 in (1.9 to 2 cm) long and about 0.7 in (1.9 cm) in diameter. This is the only species of *Pritchardia* on Nihoa and can be distinguished from other species of the genus in Hawaii by its wavy leaves; its short, hairless inflorescences; and its small, globose fruits (Beccari and Rock 1921, Read and Hodel 1990).

Pritchardia remota is known from two extant populations along 0.1 mi (0.2 km) of the length of each of two valleys which are about 0.4 mi (0.6 km) apart on opposite sides of Nihoa. Including seedlings, 680 plants are found in scattered groups: 387 plants in West Palm Valley and 293 in East Palm Valley (Herbst 1977). Earlier totals were somewhat smaller, probably because younger seedlings were not counted (Herbst 1977). An uncollected palm, no longer extant, was observed growing on Laysan Island and may have been this species (Ely and Clapp 1973, Rock 1913). Most of the populations of *P. remota* are crowded into scattered, small groves on abandoned agricultural terraces lower in the valleys. A few trees also grow at the bases of basaltic cliffs on the steep outer slopes of each of the two valleys. Plants grow from 660 to 896 ft (200 to 273 m) in elevation (Wagner *et al.* 1990). *Pritchardia remota* is unusual among Hawaiian members of the genus in that it occurs in a dry area. Fossil loulu stems have been found near sea level on Oahu, which may indicate that the genus was more widespread before so much lowland habitat was altered for human use (Carlquist 1980, Cuddihy and Stone 1990). Within the Loulu Coastal Forest Community, *P. remota* assumes complete dominance with a closed canopy and thick layers of fallen fronds in the understory (Gagne and Cuddihy 1990). Plants growing near the groves and in association with the single individuals include ’aheahea, ’ilima, popolo, and some ’ohai. Lichens grow on the trunks of the trees (Sheila Conant, University of Hawaii, pers. comm., 1991; Derral Herbst, USFWS, pers. comm., 1991). *Pritchardia remota* provides nesting and other habitat for red-footed boobies (*Sula sula rubipes*) as well as occasional perching space for brown noddies (*Anous stolidus pileatus*), two of the resident seabirds on Nihoa (Conant 1985). *Pritchardia remota* is in cultivation in several botanical gardens. The species is threatened by extinction from naturally occurring events due to the small number of populations and the plant’s narrow range (Conant 1985; Karen Shigematsu, Lyon Arboretum, pers. comm., 1991).

The first specimens of *Schiedea verticillata* were collected near Derbys Landing in 1923. Brown (in Christophersen and Caum 1931) chose the specific epithet to refer to the verticillate (whorled) arrangement of the leaves. Although Sherff (1944) transferred the species to the genus *Alsinidendron*, current workers (Wagner *et al.* 1990) consider it to be a species of *Schiedea*.

Schiedea verticillata, a member of the pink family (Caryophyllaceae), is a perennial herb which dies back to an enlarged root during dry seasons. The stems, which can reach 1.3 to 2 ft (0.4 to 0.6 m) in length, are upright or sometimes pendent. The stalkless leaves are fleshy, broad, and pale green, are usually arranged in threes, and measure 3.5 to 5.9 in (9 to 15 cm) long and 2.8 to 3.5 in (7 to 9 cm) wide. Flowers are arranged in open, branched clusters, usually 6.7 to 9.8 in (17 to 25 cm) long. Opposite or whorled pale green bracts, located at inflorescence branches and underneath the flowers, measure 0.2 to 1.6 in (6 to 40 mm) long at the central branch and 0.1 to 0.2 in (3.5 to 6 mm) long on the side branches and underneath the flowers. Each petalless flower is positioned on a stalk 0.2 to 0.8 in (5 to 20 mm) long and has five lance-shaped sepals 0.3 to 0.4 in (8 to 10 mm) long, five nectaries, 10 stamens, and four or five styles. The ovoid capsule measures 0.3 to 0.4 in (7 to 9 mm) long and releases reddish to grayish brown seeds, about 0.03 in (0.7 to 0.8 mm) long. This species, the only member of its genus to grow in the NWHI, is distinguished from other species of the genus by its exceptionally large sepals and, usually, three leaves per node (Wagner *et al.* 1990).

All historically known populations of *Schiedea verticillata* are known to be extant. Five populations are scattered in the western 10 percent of the island in an area about 0.06 mi (0.1 km) by 0.4 mi (0.6 km), and a sixth population is found on the far eastern end of the island 0.7 mi (1.2 km) away. The six populations contained a total of 385 to 414 individuals prior to 1992—at Dogs Head, at least 95 plants have been observed; a population at Devils Slide consisted of 96 to 100 plants; in West Palm Valley, 2 or 3 plants have been seen in the upper portion and 30 to 38 plants have been counted in the lower portion; the Pinnacle Peak population contained 12 to 25 individuals; at Millers Peak, 2 to 5 plants have been observed; and another population on the east spur of the island contains 148 plants (HHP 1990b1 to 1990b6). In 1992, the Service’s refuge staff counted only 170 to 190 plants in all 6 populations (K. McDermond and E. Flint, *in litt.*, 1993). *Schiedea verticillata* typically grows in soil pockets and cracks on coastal cliff faces at elevations between 100 and 890 ft (30 and 270 m) (Wagner *et al.* 1990, Weller *et al.* 1990). Associated species include ’aheahea, pohuehue, koali ’awa, kupala, kawelu, and lichens on surrounding rock. *Schiedea verticillata* is threatened by competition with pigweed, which is widespread on Nihoa and grows in habitats similar to this species.

Catastrophic events are especially threatening to the survival of these three plant species. Natural events occurring on the island of Nihoa could further restrict the plants’ ranges, and because of the limited number of individuals, extinction from catastrophic natural events is of major concern. Specifically, erosion, landslides, rock slides, and flooding could result in severe habitat destruction and death of individual plants. Evidence of heavy flash floods has been noted in the lower part of East Palm Valley, where *Pritchardia remota* specimens are located (Kramer 1962). Continued existence of these species, which have limited numbers and narrow ranges, is imperiled by naturally occurring events because of the vulnerability of these plants to disturbance events in their steep, rocky habitat (Conant 1985; S. Conant, pers. comm., 1991).

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, 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 remota* 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, on June 16, 1976, the Service published a

proposed rule 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. *Amaranthus brownii* and *Schiedea verticillata* were considered to be endangered in the proposed rule, but *P. remota* was not included. 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, *Amaranthus brownii* and *Schiedea verticillata,* which were in the proposed rule, were treated as candidates for Federal listing. The two species that were proposed as endangered in the June 16, 1976, proposed rule were considered candidates on all three of these notices. *Pritchardia remota* was included as a candidate in the 1980 notice and remained so on the 1985 and 1990 notices.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on petitions that present substantial information indicating 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 these taxa 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 one-year finding for these species.

On March 24, 1993, the Service published in the Federal Register (58 FR 15828) a proposal to list these three plants from the island of Nihoa, Hawaii, as endangered. This proposal was based primarily on information supplied by the Hawaii Heritage Program and observations by botanists and naturalists. The Service now determines these three species from the island of Nihoa to be endangered with the publication of this final rule.

The processing of this final rule follows the Service's 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 prompt processing of final rules containing species facing threats of high magnitude. Both *Pritchardia remota* and *Schiedea verticillata* face high magnitude threats. The Service's Pacific Regional Office confirmed on June 6, 1996, that the status of the three species in this rule did not change during the moratorium on final listings.

Summary of Comments and Recommendations

In the March 24, 1993, 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 listing decision. The public comment period ended on May 24, 1993. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. One letter of comment was received from a Federal agency, supporting the listings of these three plant species due to their low numbers and the recent decline in population sizes of two of the species. Additional information included in the letter has been incorporated into this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Amaranthus brownii* Christoph. & Caum (NCN), *Pritchardia remota* Becc. (loulu), and *Schiedea verticillata* F. Brown (NCN) should be classified as endangered species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Amaranthus brownii* Christoph. & Caum (NCN), *Pritchardia remota* Becc. (loulu), and *Schiedea verticillata* F. Brown (NCN) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Amaranthus brownii and *Schiedea verticillata* grow on rocky outcrops and cliff faces, making these plants vulnerable to substrate changes. Because of the steep slope and rocky nature of Nihoa, the habitat is very easily disturbed. Currently, the only legal visitors are those with Service approval, usually refuge personnel or scientific researchers who are very aware of the fragile nature of the island's environment (Conant 1985). Access to this island for Hawaiian religious ceremonies would be a permitted action, but visitors would be accompanied by refuge personnel (Jerry Leinecke, USFWS, pers. comm., 1991). With increased commercial fishing in the NWHI, there is a greater possibility of mishaps and unauthorized landings on Nihoa (Gagne and Conant 1983).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Illegal collecting for scientific or horticultural purposes or visits by individuals interested in seeing rare plants could result from increased publicity, and would threaten these three species, especially *Amaranthus brownii* and *Schiedea verticillata*. The limited legal access to Nihoa and the island's distance from the inhabited main Hawaiian Islands reduces the effect of this impact. However, the island's isolation also decreases the amount of monitoring which can be provided by Federal and State authorities.

C. Disease or Predation

Rats (*Rattus* spp.) and house mice (*Mus musculus*), which have made their way to several small islands and islets in the Hawaiian chain (Tomich 1986),

could be introduced to Nihoa from a nearby ship. Rodent predation could prove disastrous for *Pritchardia remota*; predation of seeds by rodents has reduced the reproductive capacity of other Hawaiian *Pritchardia* species (Center for Plant Conservation (CPC) 1990b, Cuddihy and Stone 1990). Rodents might also find the fleshy roots of *Schiedea verticillata* palatable (CPC 1990a). The former presence of house cats (*Felis catus*) and the current presence of geckos (*Lepidodactylus lugubris*) and at least 70 species of alien insects are proof that introductions to the island occur (Beardsley 1966; Bryan 1978; Conant *et al.* 1984; John Strazanac, Bishop Museum, pers. comm., 1991). Carmine spider mites (*Tetranychus cinnabarinus*) have been collected several times on Nihoa and could threaten *Schiedea verticillata* (CPC 1990a; J. Strazanac, pers. comm., 1991).

D. The Inadequacy of Existing Regulatory Mechanisms

All populations of the three plant species are located on Federal land within a national wildlife refuge managed by the Service. The National Wildlife Refuge System Administration Act prohibits unauthorized entry, use, or occupancy of refuge areas, as well as disturbance, injury, cutting, burning, removal, destruction or possession of ''natural growth'' (16 U.S.C. 668dd(c). However, the remoteness of this uninhabited island makes enforcement of these restrictions and monitoring of threats difficult.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Nihoa's plant populations, as well as its many birds, are vulnerable to the intentional or inadvertent introduction of alien animals. The difficulty in landing on the island provides a degree of protection from animal introductions, but a wrecked fishing boat could accidentally introduce rats, which could cause a severe and rapid degradation of both the flora and fauna of Nihoa.

Alien plant species naturalizing on Nihoa would compete with native plant taxa for space, water, nutrients, and light. Six alien plant species, which are naturalized in other parts of the Hawaiian Islands, have been found on Nihoa.

Three of the alien plant species were first recorded in the area of Millers Peak, where a military installation was located during the 1960s. *Cenchrus echinatus* (common sandbur) was first noticed between 1961 and 1969. In 1962, a soldier's towel at the military camp was found with six sandbur fruits stuck to it. This was burned, but it illustrates how easily alien propagules can be brought to Nihoa by human visitors. Service policy has been to destroy all sandbur plants, and none were seen after 1969 until 1981, when one plant with fewer than 10 fruits was discovered and destroyed. An unidentified species of the grass genus *Paspalum* was observed in 1962 near the military camp, but it has not been found since so has evidently not established. Three small colonies of *Portulaca oleracea* (pigweed) were found in 1977 near the military installation. It has now spread over the entire island, having become the only widespread exotic plant present. Pigweed grows in shallow soil pockets, especially near ridge tops, the type of habitat in which *Amaranthus brownii* and *Schiedea verticillata* grow. It may be replacing individuals of two native species of *Portulaca* and potentially could threaten *Amaranthus brownii* and *Schiedea verticillata*.

Two introduced species have been found near the southern coast. *Setaria verticillata* (bristly foxtail) was found in 1969 but has not been collected since, so it has probably not become established. *Tetragonia tetragonioides* (New Zealand spinach) was collected in 1977 and again in 1991. In 1981 one colony of *Nephrolepis multiflora* (sword fern), an alien species established in the main Hawaiian Islands, was found in the southern part of Nihoa some distance from the usual landing site. Two other colonies were found in 1983 in the northwestern part of the island. This is the first fern naturalized in the main Hawaiian Islands to have reached the NWHI and is thought to have arrived by wind dispersal. Caution on the part of personnel working on the island and frequent monitoring of the vegetation and removal of alien plants have helped keep established exotic plant species to a minimum on Nihoa (Conant 1983a, 1983b, 1985; Herbst 1980; Marshall 1964).

With its low amount of rainfall, Nihoa often has much dry vegetation, which is very susceptible to fire. An 1885 trip to Nihoa by a group led by Queen Liliuokalani illustrates this vulnerability. The group had to leave the island abruptly after they started a fire which quickly swept across the island (Culliney 1988). Fires caused by smoking or cooking remain potential threats.

Erosion, landslides, rock slides, and flooding due to natural causes potentially could result in the death of individual plants as well as habitat destruction. This especially affects the continued existence of species or populations with limited numbers and/or narrow ranges, including all three plant species in this rule. Evidence of heavy flash floods has been noted in the lower part of East Palm Valley, where there are specimens of *Pritchardia remota* (Kramer 1962).

The very limited range of all three of the plant species, the small number of populations of two of the species, and the small number of individuals of one of the species increases the potential for extinction from naturally occurring events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or an entire population. All three of the plant species are restricted in their natural range to small portions of an island with an area of only 0.25 sq mi (0.65 sq km). Two of the species, *Amaranthus brownii* and *Pritchardia remota*, have only two populations each, and fewer than 40 individuals of *A. brownii* have ever been counted.

The threats facing these three species are summarized in Table 1.

TABLE 1.—SUMMARY OF THREATS

Species	Rats	Alien plants	Fire	Substrate loss*	Limited numbers**
Amaranthus brownii		X	P	X	X1,2
Pritchardia remota	P	P	P	P	X1
Schiedea verticillata	P	X	P	X	

X=Immediate and significant threat.
P=Potential threat.
*=Substrate loss includes erosion, rock slides, and landslides.
**=No more than 100 individuals and/or no more than 5 populations.
1=No more than 5 populations.

2=No more than 50 individuals.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in issuing this final rule. Based on this evaluation, this rulemaking will list these three plant species as endangered. One of the species is known from only 2 populations and fewer than 40 individuals; another species is known from only 2 populations. Each of the three species is threatened by one or more of the following—competition with the alien plant pigweed, substrate loss, and increased likelihood of extinction and/or reduced reproductive vigor due to small numbers of individuals and populations and their extremely limited range. Because these three species are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Critical habitat is not being designated for these species for reasons discussed in the ''Critical Habitat'' section of this final rule.

Critical Habitat

Critical habitat is defined by section 3 of the Act as: (1) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (2) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Amaranthus brownii*, *Pritchardia remota*, and *Schiedea verticillata* at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The publication of precise maps and descriptions of critical habitat in the Federal Register and local newspapers as required in a proposal for critical habitat would increase the degree of threat to these plants by making them more vulnerable to take or vandalism and their fragile habitat more susceptible to damage. The listing of these species as endangered also publicizes their rarity and, thus, can make these plants attractive to researchers, collectors, and those wishing to see rare plants. This could contribute to their decline and/or increase enforcement problems. The only known populations of the three species occur on land owned and managed by the Federal government, which is aware of the location and importance of protecting the plants and their habitat. Protection of the species' habitat will be addressed through the recovery process and through the section 7 consultation process. All the plants are located on a national wildlife refuge, one of the policies of which is to conserve native vegetation, so it is unlikely that Federal activities would negatively affect the continued existence of these plants. Therefore, the Service finds that designation of critical habitat for these species is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of these species.

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 results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All populations of the three species occur on land managed by the Service as a National Wildlife Refuge. There are no other known Federal activities that occur within the present known habitat of these species.

The Act and implementing regulations at 50 CFR 17.61, 17.62, and 17.63 for endangered species set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to the three plant species from the island of Nihoa, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal with respect to any endangered plant, for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale these species in interstate or foreign commerce; or to remove and reduce to possession any such 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 (59 FR 34272, July 1, 1994) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not be likely to constitute a violation of section 9 of the Act. Such information is intended to clarify the potential impacts of a species' listing on proposed and ongoing activities within the species'

range. All three of these species occur solely on Federal refuge lands. Collecting and damaging these species are prohibited without a Federal permit. The Service is not otherwise aware of any legal activities currently being conducted by the public that will be affected by this listing and result in a violation of section 9. Illegal boat landing or entry to the island have already been discussed as potentially threatening these three species. 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 503–231–6241; FAX 503–231–6243). 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).

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 Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Ecoregion (see **ADDRESSES** section).

Authors

The primary authors of this final rule are Marie M. Bruegmann and Zella E. Ellshoff, Pacific Islands Ecoregion (see **ADDRESSES** section).

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 name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Flowering plants							
*	*	*	*	*	*		*
Amaranthus brownii	None	U.S.A. (HI)	Amaranthacae.	E	587	NA	NA
*	*	*	*	*	*		*
Pritchardia remota	Loulu	U.S.A. (HI)	Arecaceae	E	587	NA	NA
*	*	*	*	*	*		*
Schiedea verticillata	None	U.S.A. (HI)	Caryophyllaceae	E	587	NA	NA
*	*	*	*	*	*		*

Dated: August 12, 1996.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 96–21334 Filed 8–20–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 081596C]

Atlantic Tuna Fisheries; Fishery Closure

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

ACTION: Closure.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (ABT) General category quota for the August period will be attained by August 17, 1996. Therefore, the General category fishery for the August period will be closed effective at 11:30 p.m. on August 17, 1996. This action is being taken to prevent overharvest of the adjusted 193 metric tons (mt) subquota for the August period.

EFFECTIVE DATE: The General category closure for the August period is effective 11:30 p.m. local time on August 17, 1996, through August 31, 1996.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347, or Mark Murray-Brown, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

General Category Closure

NMFS is required, under 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota and publish a Federal Register announcement to close the applicable fishery.

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a quota of 186 mt of large

medium and giant ABT to be harvested from the regulatory area by vessels fishing under the General category quota during the period beginning August 1 and ending August 31. Due to an underage of 7 mt in the June/July subquota, the August subquota was adjusted to 193 mt. Based on reported catch and effort, NMFS projects that this revised quota will be reached by August 17, 1996. Therefore, fishing for, retaining, possessing, or landing large medium or giant ABT under the General category quota must cease at 11:30 p.m. local time August 17, 1996. The General category will reopen September 1, 1996 with a quota of 159 mt for the September period, plus any underage from the August period.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

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

Dated: August 15, 1996.

Richard H. Schaefer,

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

[FR Doc. 96–21242 Filed 8–15–96; 5:01 pm]

BILLING CODE 3510–22–F

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50 CFR Part 678

[I.D. 072396A]

Atlantic Shark Fisheries; Large Coastal Sharks Closure

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

ACTION: Closure.

SUMMARY: NMFS is closing the commercial fishery for large coastal sharks conducted by vessels with a Federal Atlantic Shark permit in the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This action is necessary to prevent exceeding the semiannual quota for the period July 1 through December 31, 1996.

EFFECTIVE DATE: 2330 hours local time August 31, 1996, through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, 301–713–2347; Mark Murray-Brown, 508–281–9260; or John M. Ward, 813–570–5335.

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

Section 678.24(b) of the regulations provides for two semiannual quotas of large coastal sharks to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters by commercial fishermen. The second semiannual quota is available for harvest from July 1 through December 31, 1996.

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

The AA has determined, based on the reported catch and other relevant factors, that the semiannual quota for the period July 1 through December 31, 1996, for large coastal sharks, in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, will be attained by August 31, 1996. During this closure, for vessels issued a permit under § 678.4, retention of large coastal sharks from the management unit is prohibited, unless the vessel is operating as a charter vessel or headboat, in which case the vessel limit per trip is four large coastal sharks. In addition, the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of carcasses and/or fins of large coastal sharks harvested by a person aboard any vessel that has been issued a permit under § 678.4, is prohibited, except for those that were harvested, off-loaded, and sold, traded, or bartered prior to August 31, 1996, and were held in storage by a dealer or processor.

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

Classification

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

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

Dated: August 15, 1996.

Richard H. Schaefer

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

[FR Doc. 96–21238 Filed 8–15–96; 5:01 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 163
Wednesday, August 21, 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

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV–96–929–2PR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Change in Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on a change to the reporting requirements currently prescribed under the cranberry marketing order. This rule also announces the Agricultural Marketing Service's (AMS) intention to request a revision to the currently approved information collection requirements issued under the marketing order. The marketing order regulates the handling of cranberries grown in 10 States and is administered locally by the Cranberry Marketing Committee (committee). This rule would allow the committee to collect receipt and inventory information from handlers on a different species of cranberries. This rule would provide more accurate information to the cranberry industry to be used in making marketing decisions.

DATES: Comments must be received by September 20, 1996. Pursuant to the Paperwork Reduction Act, comments to the information collection burden must be received by October 21, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, Fax # (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kathleen M. Finn, Marketing Specialists, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456: telephone: (202) 720–1509, Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 929 (7 CFR Part 929), as amended, regulating the handling of cranberries grown in 10 States, 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.''

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are approximately 25 handlers of cranberries who are subject to regulation under the marketing order and approximately 1,400 producers of cranberries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of cranberries 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.

Handlers are already required to complete a form four times a year reporting all regulated cranberries on hand for a specified period, all cranberries acquired and sold, and the new balance of cranberries on hand. This rule would necessitate adding data to this form requiring information on a new variety of cranberries not regulated under the order. The form has an estimated burden time of two hours. No additional burden time would be added to this form to acquire this information. In addition, because the industry relies on the comprehensive information provided by the committee, it is critical that the committee obtain accurate information. This information would be used in making marketing decisions and the additional burden on handlers, if any, would not be significant.

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

This proposal invites comments on a change to the reporting requirements currently prescribed under the cranberry marketing order. This rule would allow the committee to collect receipt and inventory information from

handlers on a different species of cranberries. This rule would provide more accurate information to the cranberry industry to be used in making marketing decisions. The committee unanimously recommended the above change.

This request for this information would be incorporated on the handler inventory report, a form already used by the committee. The request of this information should not constitute a significant burden on a business unit, large or small. Currently, the estimated reporting burden per response for the handler inventory report is two hours. The burden time will not change with the additional data request.

Section 929.62(e) of the cranberry marketing order provides authority to require handlers to furnish to the committee information with respect to acquisitions and dispositions of cranberries. This section also provides authority to require handlers to file reports to the committee as to the quantity of cranberries handled by such handler during any designated period.

Under the marketing order, cranberries are defined as all varieties of the fruit *Vaccinium macrocarpon* grown in the production area. In 1995, the cranberry industry experienced a short crop coupled with increased demand. To replace the shortage of *Vaccinium macrocarpon*, handlers have supplemented their inventories with *Vaccinium oxycoccus* which is a European species of cranberry, recognized by the Food and Drug Administration as a cranberry. Because of the increase in volume of this species of cranberry, it is important to the cranberry industry to know the amount of *Vaccinium oxycoccus* that is being acquired and utilized by handlers.

The order authorizes the committee to recommend limiting the quantities of cranberries which may be handled during any fiscal period. The Secretary would establish a volume regulation based on information received from the committee if the Secretary found that such regulation would effectuate the declared policy of the Act. The committee is considered by the industry as the source for comprehensive cranberry related data, primarily data relating to production, supplies, utilization and inventories. Therefore, it is critical to the committee to receive comprehensive information on cranberries.

The committee would be able to use this information on *Vaccinium oxycoccus* when considering its decisions to implement volume regulation within the industry. Since this species is not regulated under the order, the committee would need to know the quantities and which handlers have acquired *Vaccinium oxycoccus* in order to keep the data on the non-regulated species separate and apart from the data on the regulated species, *Vaccinium macrocarpon*.

Therefore, the committee recommended that section 929.105 be revised by adding a new subparagraph (c) that would require that handlers should also report on the same form as currently filed with the committee, the total quantity of *Vaccinium oxycoccus* cranberries the handler acquired and the disposition of such cranberries. Also, the handler would be required to report the respective quantities of *Vaccinium oxycoccus* cranberries and cranberry products held by the handler.

The committee and its staff are responsible for keeping information on individual handlers' inventories and receipt confidential. Information gathered by the committee, including information relating to supplies of this non-regulated species of cranberries, would only be reported in the aggregate, along with other pertinent cranberry data.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the AMS announces its intention to request a revision to a currently approved information collection for cranberries.

Title: Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Minnesota, Oregon, Washington, and Long Island in the State of New York, Marketing Order No. 929.

OMB Number: 0581–0103.

Expiration Date of Approval: March 31, 1998.

Type of Request: Revision of a currently approved information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the program.

This proposed rule would establish a requirement that each handler report four times a year, on a revised report provided by the committee, showing receipt and inventory information on a different species of cranberries. This information collection would provide more accurate information to the cranberry industry to be used in making marketing decisions.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Division regional and headquarters staff, and employees of the committee. Committee employees are the primary users of the information and AMS employees are the secondary users.

Estimate of Burden: Public reporting for this proposed collection of information will not change the current form's estimated burden time of two hours.

Respondents: Handlers of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

Estimated Number of Respondents: 1083.

Estimated Number of Responses per Respondent: 4.

Estimated Total Burden on Respondents: 874 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the functioning of the cranberry marketing order and the USDA's oversight of the program; (2) the accuracy of the collection burden estimate and the validity of methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden, including use of automated or electronic technologies.

Comments must be received by October 21, 1996. Comments should reference OMB No. 0581–0103 and the Cranberry Marketing Order No. 929, and be submitted to Kathleen M. Finn at the above address. All comments received will be available for public inspection during regular business hours at the same address. All responses to this note will be summarized and included in the request for OMB approval.

List of Subjects in 7 CFR Part 929

Marketing agreements, Cranberries, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is proposed to be amended as follows:

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

§ 929.105 [Amended]

2. Section 929.105 is amended in paragraph (b) by adding the words ''and *Vaccinium oxycoccus* cranberries'' after the word ''cranberries'' everywhere the word appears and by adding the words ''and *Vaccinium oxycoccus* cranberry products'' after the words ''cranberry products.''

Dated: August 14, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–21211 Filed 8–20–96; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Parts 92 and 130

[Docket No. 95–057–1]

Importation of Pet Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing several changes to the regulations for importing pet birds into the United States. First, we are proposing to remove the requirement for veterinary inspection at the port of entry for all pet birds imported from Canada, including pet birds of U.S. origin that have been in Canada. We would also remove the requirement that such birds may only be imported through a designated port. For pet birds of Canadian origin, we would add the requirement that the birds be accompanied by a veterinary health certificate issued by Agriculture Canada. We are also proposing to allow pet birds imported from countries other than Canada to be maintained under home quarantine for 30 days rather than be quarantined for 30 days at a facility operated by the United States Department of Agriculture. Finally, we are proposing to allow microchip implants as a form of permanent identification for pet birds of U.S. origin. We believe these actions would facilitate the importation of pet birds, while continuing to provide protection against the introduction of communicable poultry diseases into the United States.

DATES: Consideration will be given only to comments received on or before October 21, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–057–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–057–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Tracye R. Butler, Staff Veterinarian, Import-Export Animals, National Center for Import-Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–5097.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) regulate the importation of certain animals and birds, including pet birds that are imported for the personal pleasure of their individual owners and are not intended for resale, to prevent the introduction of communicable diseases of livestock and poultry.

The regulations provide different requirements for importing pet birds depending on the origin of the bird. For pet birds imported from Canada, the regulations require that, among other things, the birds must be found upon port of entry veterinary inspection to be free of poultry diseases. In order to allow for veterinary inspection, the regulations require that pet birds from Canada may only be imported through a port designated in § 92.102 or § 92.203, because these are ports where inspectors qualified to perform veterinary inspections are available. The result of this requirement has been that some pet bird owners from Canada have to travel a considerable distance to import their pet bird through a designated port of entry. This is often inconvenient and expensive for pet bird owners.

Approximately 300 pet birds are imported from Canada through designated ports each year. No communicable disease of poultry has ever been detected upon veterinary inspection at the port of entry in a pet bird from Canada. For this reason, we believe that importing pet birds from Canada without veterinary inspection at the port of entry would not pose any significant risk of introducing a communicable disease of poultry into the United States. We are, therefore, proposing to remove the requirement that birds imported from Canada must receive a veterinary inspection at the port of entry, as well as the requirement that pet birds from Canada may only be imported through designated ports.

However, as a precaution to ensure that pet birds imported from Canada do not carry communicable poultry diseases, we would require that pet birds imported from Canada must be accompanied by a veterinary health certificate issued by a veterinarian employed full-time by Agriculture Canada. The certificate would have to state that, upon inspection by an Agriculture Canada veterinarian, the bird was found free of any signs of communicable diseases of poultry. The inspection by the Agriculture Canada veterinarian must have been conducted within 30 days preceding the date of importation of the pet bird. Although it would cost a pet bird owner approximately US $9.50 (Can $13.00) to obtain this certificate, the cost is less than the average charge of US $16.50 for veterinary inspection of the pet bird at the port of entry. Also, the pet bird owner would be able to obtain the certificate at his or her convenience (within 30 days prior to importation) and would be able to import the pet bird through whatever port is most convenient to the owner.

For pet birds of U.S. origin that are returning to the United States from any country, the regulations also require that the birds be imported only through ports designated in § 92.102 or § 92.203 and that the birds receive a veterinary inspection at the port of entry. Further, if the pet birds have been outside the United States for more than 60 days, the regulations require that the birds be maintained by their owner under home quarantine for a minimum of 30 days, until they are released from quarantine by an inspector of the Animal and Plant Health Inspection Service (APHIS). For the reasons stated previously for pet birds from Canada, we are proposing to remove these requirements for pet birds of U.S. origin that have been outside the United States only in Canada. Pet birds that originated in the United States but that have been in any country other than Canada during their time outside the United States would continue to be subject to veterinary inspection at the port of entry and, if appropriate, home quarantine.

For pet birds not of U.S. origin imported from any country other than

Canada, the regulations require, among other things, that the birds be quarantined for a minimum of 30 days at a quarantine facility operated by the United States Department of Agriculture (USDA). There, each pet bird or lot of birds is isolated in a biologically secure unit separate and apart from all other avian species (if more than one bird is imported by the same owner and the birds are compatible, the ''lot'' can be kept together in the same isolette). During the isolation period, the pet birds are subjected to tests and procedures to determine whether they are free from communicable diseases of poultry. If the pet birds are found during quarantine to be infected with or exposed to any communicable disease of poultry, they will not be released for entry into the United States.

The primary diseases of concern that could be carried by pet birds imported from other countries are exotic Newcastle disease (END) and pathogenic strains of avian influenza (AI). Captive-bred birds are at a relatively low risk of spreading END, pathogenic AI, or other communicable poultry diseases, because they are born and raised in a controlled environment where it would be easy to determine if they had been exposed to an infected bird. Wild-caught birds are at the highest risk for carrying END, pathogenic AI, and other communicable diseases of poultry, because it is impossible to control or determine what they were exposed to in the wild.

As a result of the Wild Bird Conservation Act of 1992 (the Act), the number of wild-caught pet birds imported into the United States has been significantly reduced. Under the Act, in order to import any pet bird purchased outside the United States, an owner must have documented evidence that he or she has resided outside the United States continuously for at least 1 year, may not import more than two pet birds, must have a permit from the U.S. Fish and Wildlife Service, documented evidence that each bird was acquired legally, and all necessary permits from the country of export. These requirements eliminate a once common practice of U.S. citizens purchasing exotic, wild-caught birds while on vacation, and bringing them back to the United States as pets. The virtual elimination of wild-caught pet bird importations, as well as an overall reduction in importation of any pet birds, significantly reduces the risk of imported pet birds introducing communicable diseases of poultry into the United States. There have been no isolations of END or pathogenic AI in any pet bird legally imported through a USDA-operated quarantine facility in at least 10 years.

For these reasons, although we continue to believe that it is necessary to take the precaution of quarantining pet birds imported from countries other than Canada for a minimum of 30 days, we do not believe that it is necessary to require that the birds be quarantined in a USDA-operated facility. Therefore, we are proposing to allow owners of such birds to maintain their pet birds under home quarantine for the same 30-day time period. The provisions for home quarantine would be the same as those currently in the regulations for pet birds of U.S. origin that have been outside of the United States for more than 60 days (see § 92.101(c)(2)). At the time the pet bird is offered for importation at the port of entry, the owner must sign a home quarantine agreement on VS Form 17–8, stating that: (1) The bird has been in the owner's possession while outside the United States for the 90 days prior to the date the bird is offered for importation and that, during that 90 days, the bird was not in contact with any poultry or other birds; (2) the bird will be maintained under quarantine in the owner's personal possession separate and apart from all poultry and other birds for a minimum of 30 days following importation at the address where the birds are to held (listed by the owner on the agreement); (3) the bird will be made available for health inspection and testing by an inspector upon request until released from quarantine by the inspector; (4) if the bird must be moved from the address listed on the agreement, the owner will contact the Federal official listed on the agreement prior to such movement; and (5) the owner agrees to immediately notify appropriate Federal officials in the State of destination if any signs of disease are noted in any bird, or if any bird dies, during the quarantine period. The bird will not be released from quarantine until an inspector has determined that the owner has complied with all the provisions on the agreement.

Although we believe that most owners importing pet birds from countries other than Canada would choose to quarantine their pet birds at home, we would not remove the option for quarantine in a USDA-operated facility. Some owners may choose not to quarantine their pet birds at home. Also, we would add a stipulation for the importation of any pet bird, including pet birds of U.S. origin or pet birds from Canada, that if an inspector at the port of entry determines that any of the requirements for importation have not been met (for example, the pet bird has not been in the owner's personal possession for the required minimum amount of time prior to importation, or the pet bird is not accompanied by the appropriate health certificate), the inspector will require that the pet bird be quarantined at a USDA-operated facility in order to be imported.

User Fees

The regulations in 9 CFR part 130 contain schedules of user fees for certain services performed by APHIS. Among the services for which APHIS charges a user fee are veterinary inspection of pet birds at the port of entry, home quarantine inspection for pet birds, and isolette fees for pet birds that are quarantined at facilities operated by the USDA. We are proposing to add a new paragraph (c)(4) to § 92.101 to reference the user fee schedules in part 130, in order to ensure that pet bird owners would be aware that they will be charged all applicable user fees for inspection and quarantine services, as listed in 9 CFR part 130. We would also amend the regulations in 9 CFR part 130 to reflect that pet birds imported from any country could now undergo home quarantine, and should be charged the appropriate user fee for home quarantine services.

Miscellaneous

The regulations in § 92.101(c)(2)(i) currently require that pet birds of U.S. origin must have been identified prior to departure from the United States with a leg band or tattoo bearing a number. The leg band or tattoo number must be listed on the veterinary health certificate that accompanies the pet bird. However, microchip implants are the preferred form of identification for some pet bird owners because some birds do not adapt well to wearing a leg band (they chew the band or catch it on objects, potentially injuring themselves), and because the thin skin of birds makes it difficult to read a tattoo.

Therefore, we are proposing to allow owners of U.S.-origin birds the option of identifying their pet birds with a microchip implant. We would revise the regulations in this respect to state that the veterinary health certificate accompanying the bird must show the leg band, tattoo, or microchip identification number that was affixed to the bird prior to the departure of the bird from the United States. Even though we would allow identification with a microchip, we would not be able to provide devices necessary to read the microchip at the port of entry. Currently, there is no microchip reader capable of reading all microchips produced by different manufacturers.

Therefore, we would require the owner of a pet bird identified by a microchip to also provide a reader capable of reading the microchip identification of the pet bird.

We are proposing to amend § 92.101(c) to require all pet birds to be presented in a cage at the port of entry by their owners. These requirements currently appear only in § 92.101(c)(1) for pet birds imported from Canada. We are also proposing to remove the requirement in § 92.101(c)(2)(ii)(A) that pet birds of U.S. origin that have been outside the United States for more than 60 days must be accompanied by a notarized declaration under oath or affirmation (or a statement signed by the owner and witnessed by a Department inspector) stating that the birds have not been in contact with poultry or other birds while outside the United States. Owners of such birds are already required to sign a home quarantine agreement on VS Form 17–8. VS Form 17–8 includes a certification that the bird has not been in contact with any poultry or other birds for at least 90 days prior to importation, and we believe 90 days would allow adequate time for any signs of communicable poultry diseases to appear. Therefore, the notarized declaration appears to be unnecessary.

We are also proposing to make two editorial changes in order to make the regulations consistent and easier to read. First, the current regulations in § 92.101(c) refer variably to the importation of pet birds and to the importation of ''lots'' of pet birds. Because the importation of pet birds under these regulations is not necessarily in lots, and often involves a single pet bird, and because the term ''lot'' could be confused to mean commercial lots of birds, we are proposing to remove the term ''lots of pet birds'' wherever it appears.

The second editorial change would be to revise the description in § 92.101(c)(2)(ii)(B) of the agreement for home quarantine to make it consistent with the language that actually appears on VS Form 17–8. For example, as stated on VS Form 17–8, we would add that, if the birds must be moved during the quarantine period, the owner agrees to contact the official listed on the form prior to such movement.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The 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.

This proposal would remove the requirement for veterinary inspection at the port of entry for all pet birds imported from Canada, including pet birds of U.S. origin that have been in Canada. We would also remove the requirement that such birds may only be imported through a port designated in § 92.102 or § 92.203. For pet birds of Canadian origin, we would add the requirement that the birds be accompanied by a veterinary health certificate issued by Agriculture Canada.

Approximately 300 pet birds of U.S. and Canadian origin are imported into the United States from Canada each year. Many American and Canadian citizens routinely travel across the United States-Canada border with their pet birds. Some have homes on both sides of the border. Currently, pet birds imported from Canada, whether of U.S. or Canadian origin, must undergo veterinary inspection at the port of entry. In order to allow for veterinary inspection, the pet birds may only be imported through a port designated in § 92.102 or § 92.203, because these are ports where inspectors qualified to perform veterinary inspections are available. The result of this requirement has been that pet bird owners entering the United States from Canada often travel a considerable distance in order to import their pet bird through a designated port of entry. This is often inconvenient and expensive for pet bird owners.

This proposal would allow both Canadian- and U.S.-origin pet birds imported from Canada to be imported through any port of entry on the U.S.-Canada border. This could result in a savings for pet bird owners who would otherwise have had to travel considerable distances to enter through a designated port of entry. These pet bird owners would also no longer have to pay the user fee for port of entry veterinary inspection. Currently, if the pet birds are imported during business hours, the user fee for veterinary inspection is based on an hourly rate of $56.00 per hour or $14.00 per quarter hour, with a minimum charge of $16.50. The average charge for a veterinary inspection is $16.50. After business hours, the user fee is $65.00 per hour on weekdays and holidays ($16.25 per quarter-hour) and $74.00 per hour on Sundays ($18.50 per quarter-hour).

We do not expect that the addition of a veterinary health certificate requirement for pet birds of Canadian origin would have any significant economic impact on pet bird owners. Agriculture Canada charges Can$13.00 (approximately US$9.50) to issue a veterinary health certificate.

This proposal would also allow pet birds imported from countries other than Canada to be maintained under home quarantine for 30 days rather than be quarantined for 30 days at a facility operated by USDA. Approximately 1,520 pet birds were imported into the United States from countries other than Canada during FY 1994.

Currently, a user fee of $6.50 per day for one bird is charged to owners who quarantine their pet birds in a USDA-operated facility, adding to about $195.00 for a minimum 30-day isolation. If an owner is importing more than one pet bird and the birds can be kept together in a single isolette, the daily fee is raised by approximately $1.25 to $1.50 per bird (for up to five birds). If the birds cannot be kept together, the owner is charged the full $6.50 per day for each bird imported. Since the quarantine facility is usually far from the owner's final destination, the owner must also either return to pick up the bird personally or pay a broker to deliver the bird after it is released from quarantine. Costs for broker services, the most common choice of pet bird owners, run between approximately $50 and $150 plus shipping costs.

Pet bird owners who choose to maintain their birds under a 30-day home quarantine as a result of this proposal would be charged a user fee of $169.75 per bird or group of birds (if the group of birds entered the United States at the same time and undergoes quarantine at the same location). This is the same user fee currently charged for pet birds of U.S. origin that must be maintained under home quarantine because they were outside of the United States for more than 60 days. The fee covers veterinary inspection at the port of entry and the cost of veterinary inspection at the address where the bird is held under home quarantine. The user fee for home quarantine is $25.25 less than the fee for quarantine at a USDA-operated facility. The owner would also save the cost of retrieving the bird personally or paying a broker to deliver the bird. Also, home quarantine would result in a savings for pet bird owners who are importing more than one pet bird because the fee would remain the same as long as the birds are quarantined at the same location. Pet bird owners would continue under this proposal to have the option of quarantining their birds at a USDA-operated facility.

Finally, this proposal would allow microchip implants to be used as a form of permanent identification for pet birds

of U.S. origin. The cost of a microchip implant is less than $10. A microchip reader, which the owner would have to provide, costs approximately $450 to $1250. However, this rule would not require owners to identify their pet birds with microchip implants, and we believe that most pet bird owners would choose the less costly identification methods currently allowed in the regulations (tattoo or leg band).

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

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

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, 9 CFR parts 92 and 130 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 92.101 would be amended as follows:

a. Paragraphs (c)(3)(ii), (c)(3)(iii), (c)(3)(iv), and (c)(3)(v) would be redesignated as paragraphs (c)(3)(iv)(B)(*1*), (c)(3)(iv)(B)(*2*), (c)(3)(iv)(B)(*3*), and (c)(3)(iv)(B)(*4*), respectively.

b. In paragraph (c), a heading and introductory text would be added, paragraphs (c)(1), (c)(2), (c)(3) introductory text and (c)(3)(i) would be revised, and new paragraphs (c)(3)(ii), (c)(3)(iii), (c)(3)(iv) introductory text, (c)(3)(iv) (A), (c)(3)(iv)(B) introductory text and (c)(4) would be added to read as set forth below.

c. In paragraph (d), the introductory text would be revised to read as set forth below.

§ 92.101 General prohibitions; exceptions.

* * * * *

(c) *Importation of pet birds.* Any pet bird that does not meet the requirements in paragraph (c)(1), (c)(2), or (c)(3) may only be imported after quarantine at a USDA-operated quarantine facility, in accordance with paragraph (c)(3)(iv)(B).

(1) *Pet birds from Canada.* Any pet bird that is not known to be affected with or exposed to any communicable disease of poultry may be imported from Canada in accordance with the following requirements:

(i) The bird must be presented at the port of entry by its owner and in a cage;

(ii) The bird must be accompanied by a veterinary health certificate issued by a veterinarian employed full-time by Agriculture Canada. The certificate must state that, upon inspection by the veterinarian, the bird was found free of any signs of communicable diseases of poultry. The veterinary inspection must have been conducted within 30 days preceding the date of importation; and

(iii) At the time the bird is offered for importation at the port of entry, the owner must sign a document stating that the bird has been in the owner's possession for the 90 days preceding the date of importation and that, during that 90 days, the bird has not been in contact with any poultry or other birds (for example, association with other avian species at exhibitions or in aviaries).

(2) *Pet birds that originated in the United States.* (i) *Not outside the United States for more than 60 days.* Any pet bird that originated in the United States, and that has not been outside the United States for more than 60 days, and that is not known to be affected with or exposed to any communicable disease of poultry may be imported in accordance with the following requirements:

(A) The bird must be presented in a cage at the port of entry by its owner;

(B) The bird must be accompanied by a United States veterinary health certificate issued prior to the departure of the bird from the United States. The certificate must show the leg band, tattoo, or microchip permanent identification number that was affixed to the bird prior to the departure of the bird from the United States. If the bird is identified by a microchip, the owner must provide a reader capable of reading the microchip identification of the pet bird; and

(C) At the time the bird is offered for importation at the port of entry, the owner must sign a document stating that the bird has been in the owner's possession during the entire time it was outside the United States and that, during that time, the bird was not in contact with any poultry or other birds (for example, association with other avian species at exhibitions or in aviaries).

(D) Except for pet birds of U.S. origin that have been outside the United States only in Canada, the bird may be imported only through a port designated in § 92.102 or § 92.203. An inspector at the port of entry will perform a veterinary inspection and must determine that the bird is free of any signs of communicable diseases of poultry, and that the leg band, tattoo, or microchip number is the same as the identification number found on the veterinary health certificate, before the bird may be imported.

(ii) *Outside the United States for more than 60 days.* Any pet bird that originated in the United States and that has been outside the United States for more than 60 days, and that is not known to be affected with or exposed to any communicable diseases of poultry, may be imported in accordance with the following requirements:

(A) The bird must meet all the requirements of paragraphs (c)(2)(i)(A), (c)(2)(i)(B), and (c)(2)(i)(D); and

(B) Except for pet birds of U.S. origin that have been outside the United States only in Canada, at the time the bird is offered for importation at the port of

entry, the owner must sign a home quarantine agreement on VS Form 17–8. The bird will not be released from quarantine until an inspector has determined that the owner has complied with all the provisions on the agreement. Under the agreement:

(*1*) The owner certifies that the bird has been in the owner's possession while outside the United States for the 90 days prior to the date the bird is offered for importation and that, during that 90 days, the bird was not in contact with any poultry or other birds;

(*2*) The owner agrees that the bird will be maintained under quarantine in the owner's personal possession separate and apart from all poultry and other birds for a minimum of 30 days following importation at the address where the birds are to be held (listed by the owner on the agreement), and that the bird will be made available for health inspection and testing by an inspector upon request until released from quarantine by the inspector. The owner also agrees that, if the bird must be moved from the address listed on the agreement, the owner will contact the Federal official listed on the agreement prior to such movement; and

(*3*) The owner agrees to immediately notify appropriate Federal officials in the State of destination if any signs of disease are noted in any bird, or if any bird dies, during the quarantine period.

(iii) Pet birds of United States origin that do not meet the requirements of paragraph (c)(2) of this section may be imported in accordance with the requirements of paragraph (c)(3) of this section.

(3) *Pet birds from countries other than Canada that did not originate in the United States.* Any pet bird may be imported from any country other than Canada in accordance with the following requirements:

(i) The bird may be imported only through a port designated in § 92.102 or § 92.203; except, if the bird is to be quarantined at a USDA-operated facility, the bird may be imported only through a port designated in § 92.102(a). An inspector at the port of entry will perform a veterinary inspection and must determine that the bird is free of any signs of communicable diseases of poultry before the bird will be released for entry into the United States;

(ii) The bird must be presented at the port of entry by its owner and in a cage;

(iii) The bird must be accompanied by a veterinary health certificate issued by a national government veterinary officer of the country of export stating that he or she personally inspected the bird or birds listed on the health certificate and found them to be free of any signs of exotic Newcastle disease, ornithosis, or any other communicable diseases of poultry, and that the birds were being exported in compliance with the laws and regulations of the country of export. For pet birds from Mexico, the veterinary health certificate may be issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so. Veterinary health certificates written in a foreign language must be translated into English, at the expense of the importer; and

(iv) The bird must be quarantined for a minimum of 30 days following the date of importation. The owner of the bird may choose to make advance reservations at a USDA-operated quarantine facility or may agree to maintain the bird under home quarantine, as described, in paragraph (c)(3)(iv)(A), unless an inspector at the port of entry determines that the bird must be quarantined at a USDA-operated quarantine facility because any of the requirements in paragraph (c)(3) are not met.

(A) *Home quarantine.* For any pet bird that is to be maintained under home quarantine, the owner must sign an agreement on VS Form 17–8. The bird will not be released from quarantine until an inspector has determined that the owner has complied with all the provisions on the agreement. Under the agreement:

(*1*) The owner certifies that the bird has been in the owner's possession for the 90 days prior to the date the bird is offered for importation and that, during that 90 days, the bird was not in contact with any poultry or other birds;

(*2*) The owner agrees that the bird will be maintained under quarantine in the owner's personal possession separate and apart from all poultry and other birds for a minimum of 30 days following importation at the address where the bird is to be held (listed by the owner on the agreement), and that the bird will be made available for health inspection and testing by an inspector upon request until released from quarantine by the inspector. The owner must also agree that, if the bird must be moved from the address listed on the agreement, the owner will contact the Federal official listed on the agreement prior to such movement; and

(*3*) The owner agrees to immediately notify appropriate Federal officials in the State of destination if any signs of disease are noted in any bird, or if any bird dies, during the quarantine period.

(B) *USDA-operated facility quarantine.* For any bird that is to be quarantined at a USDA-operated facility:

* * * * *

(4) *User fees.* Owners of pet birds imported in accordance with paragraph (c)(1), (c)(2), or (c)(3) will be charged all applicable user fees for inspection and quarantine services, as listed in part 130 of this chapter.

(d) *Birds transiting the United States en route to another country.* The provisions in this subpart relating to birds shall not apply to healthy birds, except ratites, that are transiting the United States en route to another country, and that are not known to be affected with or exposed, within the 90 days preceding the date of export from the country of origin, to communicable diseases of poultry, if an import permit[4] has been obtained under § 92.103 of this chapter and all conditions therein are observed; and if such birds are handled as follows:

* * * * *

PART 130—USER FEES

3. The authority citation for part 130 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 7 CFR 2.22, 2.80, and 371.2(d).

4. In § 130.8, paragraph (a), the table would be amended by revising the entry for ''Pet birds'' to read as follows:

§ 130.8 User fees for other services.

(a) * * *

Service	User fee (per lot)
* * * * *	
Pet birds imported into the United States from any country except Canada that are:	
Subject to port of entry veterinary inspection and home quarantine inspection	169.75
Subject only to port of entry veterinary inspection	71.25
* * * * *	

[4] Such permit may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, Operational Support, 4700 River Road Unit 33, Riverdale, Maryland 20737–1231. Requests for approval of such facilities should also be made to the Deputy Administrator.

Done in Washington, DC, this 14th day of August 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–21208 Filed 8–20–96; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, and 70

[Docket No. PRM–30–61]

Nuclear Energy Institute, Receipt of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Nuclear Energy Institute (NEI) on behalf of nuclear material licensees. The Commission has docketed the petition Docket No. PRM–30–61. The petitioner requests that the NRC amend its regulations governing monitoring and maintenance programs for the decommissioning process at facilities of special nuclear materials licensees. The petitioner's suggested amendments would allow material licensees to continue monitoring and maintaining facilities, separate buildings, or outside storage areas that have not been used for 24 months, rather than requiring licensees to begin the decommissioning process after 24 months of inactivity.

DATES: Submit comments by November 4, 1996. Comments received after this date will be considered if it is practical to do so, but assurance of consideration can be given only to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

For a copy of the petition, write: Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Electronic access is explained at the end of the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC) received a petition for rulemaking dated May 24, 1996, from the Nuclear Energy Institute (NEI). The petition was docketed as PRM–30–61 on May 29, 1996. The petitioner requests that the NRC amend the regulations in 10 CFR Parts 30, 40, and 70 to establish a more flexible alternative to the current provisions required for decommissioning any facility, separate building, or outside area after it has been inactive for at least 24 months.

The petitioner discusses the NRC's Site Decommissioning Plan to address facilities that had not operated for some period of time and had not started the decommissioning process. The study that led to the plan was initiated because the owners of a number of facilities had gone into bankruptcy or could not be identified, and because a number of sites had unique decommissioning or financial issues to be resolved in order to complete decommissioning.

The NRC began a second study to determine the appropriateness of establishing regulations to prevent other licensees from falling into one of three categories. Two key antecedents for licensees falling into the categories were identified. First, the regulations did not state a specific time period for decommissioning, either from when operations ceased or from the time decommissioning started to the time it was completed. Second, if decommissioning was delayed for a long period of time, safety practices could become lax, key personnel could leave, management interest would wane, or bankruptcy, corporate takeover, and other unforeseen changes could occur, all of which would complicate or further delay decommissioning.

The petitioner states that in January 1990, the NRC directed its staff to establish timeline criteria for decommissioning the sites of materials licensees. The petitioner describes NRC staff began efforts to establish the requirements for timely decommissioning. The work culminated in SECY–92–057, dated February 19, 1992. In June 1992, the NRC issued a staff requirements memorandum approving the proposed rulemaking. The notice for comments was published in the Federal Register on January 13, 1993 (53 FR 4099). The comment period expired on March 29, 1993. The NRC received 17 comment letters, including one from the predecessor organization to NEI. This comment focused on the lack of a standby provision in the rule.

The petitioner further states that the proposed rule included four major points: first, to establish a time limit of 24 months of inactivity, after which a licensee must submit notification to the NRC; second, to establish a time limit of 12 months following the notification of ceasing operations to submit the decommissioning plan; third, to provide a provision for requests to delay or postpone the initiation of the decommissioning process; and fourth, to establish a time period for completing decommissioning. Most of the comments the NRC received were focused on the timing of each aspect and the lack of residual contamination criteria. The NRC decided not to adopt the suggestion to extend the 24-month period of inactivity before notification because the commenters did not provide adequate substantiating rationale for selecting an alternative schedule.

The Petitioner

The petitioner is the Nuclear Energy Institute (NEI), the organization that coordinates unified nuclear industry policy on matters affecting the nuclear energy industry. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

Supporting Statement

The petitioner believes that NRC's overall objective was to ensure timely decommissioning of material licensees' facilities following termination of the license or inactivity of the site for a specified period of time. Although the final rule (July 15, 1994; 59 FR 36027) accomplishes this objective, the petitioner believes that it also has the potential to eliminate important components from the nuclear industry infrastructure. These components, facilities, and buildings may be needed in future years to support continuing operation or potential industry expansion. The petitioner states that it may not have been NRC's intent to eliminate components of this infrastructure, but the delay and postponement provision and the absence of an alternative monitoring and maintenance program essentially does just that.

The petitioner believes that NRC's position does not reflect the cohesive industry of today; specifically, the market and industry have matured and demand has stabilized within a respectable range. The petitioner states that companies understand today's market and are willing to assume the holding costs to keep facilities in the standby mode. Furthermore, the petitioner states that the ability to establish a standby mode is functionally unavailable under the timeliness rule. NRC dismissed the proposed alternative standby mode extension on the grounds that adequate, substantial rationale for an alternative were not provided and that demonstrating adequate funds to maintain the site was unacceptable because bankruptcy, corporate takeover, or other unforseen changes in the company's financial status could result in abandonment of the site.

The petitioner believes that the NRC's staff dismissal of the proposed alternative did not take into consideration related NRC regulations on decommissioning and transfer of ownership. The current series of regulations in Parts 30, 40, and 70 ensures adequate funding is available for decommissioning of a site. Similar regulations for the transfer of ownership provide the NRC with assurances that companies who hold the license have sufficient financial ability to use the radioactive material in a manner that provides benefit to the nation, while providing protection for the health and safety of the public.

According to the petitioner, NRC regulations were not intended to give the NRC jurisdiction over the commercial aspects of the licensee's activities. The petitioner believes that a company that has a valid NRC or Agreement State license and operates within the conditions of the license should make the commercial decision on starting and stopping operations, as well as deciding when to place buildings or facilities in the standby mode and how long to maintain them in this mode. The petitioner believes that NRC regulations should not impose restrictions on facilities or sites that have the potential to impact commercial decisions.

The petitioner has included an appendix entitled ''Supplementary Analyses in Support of the Petition for Rulemaking,'' which contains analyses of issues that the NRC must consider, including the effect of the proposed action on the environment and small business entities, the paperwork required of those affected by the change, and whether or not a regulatory analysis must be performed or the backfit rule applies to this action.

The NRC is soliciting public comment on the petition submitted by NEI that requests the following changes to 10 CFR Parts 30, 40, and 70.

The Petitioner's Proposed Amendment

The petitioner recommends the following amendments to 10 CFR Parts 30, 40, and 70.

1. The petitioner proposes that § 30.36 be amended by redesignating paragraph (e) as (e)(2) and adding a new paragraph (e)(1) to read as follows:

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

* * * * *

(e) * * *

(1) In lieu of decommissioning, the licensee may monitor and maintain a facility, separate building or outside storage area as described in paragraphs (d)(3) or (d)(4) of this section in accordance with an approved program, provided the proposed plan is submitted to the NRC within 24 months of the cessation of principle activities within a facility, separate building or outside storage area. The program includes:

(i) Financial assurance for decommissioning;

(ii) A description of the monitoring and maintenance plan that is to be implemented, which will assure that any remaining contamination will be contained and that worker and public safety will be assured; and

(iii) Financial assurance to support the monitoring and maintenance program for the standby period requested.

* * * * *

2. The petitioner proposes that § 40.42 be amended by redesignating paragraph (e) as (e)(2) and adding a new paragraph (e)(1) to read as follows:

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

* * * * *

(e) * * *

(1) In lieu of decommissioning, the licensee may monitor and maintain a facility, separate building or outside storage area as described in paragraph (d)(3) or (d)(4) of this section in accordance with an approved program, provided the proposed plan is submitted to the NRC within 24 months of the cessation of principle activities within the facility, separate building or outside storage area. The program includes:

(i) Financial assurance for decommissioning;

(ii) A description of the monitoring and maintenance plan that is to be implemented, which will assure that any remaining contamination will be contained and that worker and public safety will be assured; and

(iii) Financial assurance to support the monitoring and maintenance program for the standby period requested.

* * * * *

3. The petitioner proposes that § 70.38 be amended by redesignating paragraph (e) as (e)(2) and adding a new paragraph (b)(1) to read as follows:

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

* * * * *

(e) * * *

(1) In lieu of decommissioning, the licensee may monitor and maintain a facility, separate building, or outside storage area as described in paragraph (d)(3) or (d)(4) of this section in accordance with an approved program, provided the proposed plan is submitted to the NRC within 24 months of the cessation of principle activities within a facility, separate building or outside storage area. The program includes:

(i) Financial assurance for decommissioning;

(ii) A description of the monitoring and maintenance plan that is to be implemented, which will assure that any remaining contamination will be contained and that worker and public safety will be assured; and

(iii) Financial assurance to support the monitoring and maintenance program for the standby period requested.

* * * * *

Electronic Access

Comments may be submitted electronically in either ASCII text or WordPerfect format (version 5.1 or later) by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on this rulemaking also are available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number 800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100

terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

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

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

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

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

Dated at Rockville, Maryland, this 15th day of August, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–21349 Filed 8–20–96; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 219

[Regulation S; Docket No. R–0934]

Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing an amendment to subpart B of its Regulation S. Subpart B cross-references the substantive provisions of a joint rule adopted by the Board and the Department of the Treasury relating to the recordkeeping requirements for funds transfers and transmittals of funds. The proposed amendment would clarify that Regulation S does not apply to any person or transaction or class of persons or transactions that the Treasury has exempted from the joint rule.

DATES: Comments must be submitted on or before September 20, 1996.

ADDRESSES: Comments, which should refer to Docket No. R–0934, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Louise Roseman, Associate Director, (202/452–2789), Division of Reserve Bank Operations and Payment Systems; Oliver Ireland, Associate General Counsel (202/452–3625), or Elaine Boutilier, Senior Counsel (202/452–2418); Legal Division. For the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act,[1] as amended by the Annunzio-Wylie Anti-Money-Laundering Act of 1992,[2] authorizes, and in some cases requires, the Secretary of the Treasury[3] and the Board to prescribe recordkeeping rules for domestic and international funds transfers and money transmittals. The Board and the Treasury issued a joint rule,[4] effective May 28, 1996, that sets forth recordkeeping and reporting requirements for funds transfers and money transmittals by banks and nonbank financial institutions. These requirements are intended to assist in the investigation and prosecution of money-laundering activities. In promulgating these rules, the Board and the Treasury determined that the requirements would have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The substance of the joint rule is codified with the Treasury's Bank Secrecy Act regulations in 31 CFR part 103.[5] At the same time, the Board added subpart B to its Regulation S (12 CFR part 219) to cross-reference the joint rule.

Under its general Bank Secrecy Act regulations, the Treasury may make exceptions or grant exemptions from the requirements in 31 CFR part 103 for particular persons or classes of persons or particular transactions or classes of transactions.[6] The Board has no similar exemptive provisions in Regulation S. The Board recognizes the possibility that the Treasury could grant an exception or exemption for a person or transaction subject to the joint rule. Therefore, to avoid confusion and to ensure consistent application of the joint rule and subpart B of Regulation S, the Board requests comment on an amendment to Regulation S to clarify that subpart B does not apply to a particular person or class of persons or particular transaction or class of transactions to the extent that the Treasury has determined that the joint rule does not apply to that person,

[1] Pub. L. 91–508, codified at 12 U.S.C. 1829b and 1951–1959, and 31 U.S.C. 5311–5329.

[2] Pub. L. 102–550, title XV.

[3] The Secretary of the Treasury has delegated the authority to administer the Bank Secrecy Act to the Director of the Financial Crimes Enforcement Network.

[4] 60 FR 231 (January 3, 1995), as amended by 60 FR 44144 (August 24, 1995) and 61 FR 14382 (April 1, 1996).

[5] 31 CFR 103.11 and 103.33 (e) and (f).

[6] *See* 31 CFR § 103.45.

transaction, or class of persons or transactions.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b)), a description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule, are contained in the supplementary material above.

The proposed rule requires no additional reporting or recordkeeping requirements and does not overlap with other federal rules. Rather, the proposal clarifies the relationship between the Regulation S and the joint rule. Another requirement for the initial regulatory flexibility analysis is a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply. The proposal will apply to all institutions subject to the regulation, regardless of size, but would not result in any increased compliance or other burden for affected institutions, and may result in reduced compliance burden to the extent that the Treasury exempts persons or transactions that would otherwise be subject to Regulation S.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

List of Subjects in 12 CFR Part 219

Banks, banking, Currency, Foreign banking, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 12 CFR part 219 is proposed to be amended as set forth below.

PART 219—REIMBURSEMENT FOR PROVIDING FINANCIAL RECORDS; RECORDKEEPING REQUIREMENTS FOR CERTAIN FINANCIAL RECORDS (REGULATION S)

Subpart B—Recordkeeping and Reporting Requirements for Funds Transfers and Transmittals of Funds

1. The authority citation for subpart B is revised to read as follows:

Authority: 12 U.S.C. 1829b(b)(2) and (3).

2. In § 219.21, the first word ''Such'' in the last sentence is revised to read ''These'' and a new sentence is added immediately preceding the last sentence to read as follows:

§ 219.21 Authority, purpose, and scope.

* * * This subpart does not apply to a particular person or class of persons or a particular transaction or class of transactions to the extent that the Treasury has determined that 31 CFR 103.33(e) and (f) do not apply to that person, transaction, or class of persons or transactions. * * *

By order of the Board of Governors of the Federal Reserve System, August 15, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–21264 Filed 8–20–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 93, 121, and 135

[Docket No. 28653]

Special Flight Rules in the Vicinity of Grand Canyon National Park; Draft Environmental Assessment

AGENCY: Federal Aviation Administration (FAA), Dot.

ACTION: Notice of Availability of Draft Environmental Assessment (EA) and Invitation to Comment.

SUMMARY: This document gives notice of the availability of the draft environmental assessment for a Notice of Proposed proposing to modify the provisions of Special Federal Aviation Regulation Number 50–2 (SFAR 50–2), Special Flight Rules in the Vicinity of the Grand Canyon National Park (GCNP) (61 FR 40120, July 31, 1996). The FAA is proposing these changes to reduce the impact of aircraft noise on the park environment and to assist the National Park Service (NPS) in achieving its statutory mandate imposed by Public Law 100–91 to provide for the substantial restoration of natural quiet and experience in GCNP.

DATES: The opportunity to comment on the draft environmental assessment (EA) will extend from August 20, until October 4, 1996. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Written comments on the Draft EA should be received at the following address, in triplicate, by October 4, 1996: Headquarters Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC–10), Docket No. 28653, 800 Independence Avenue, S.W., Washington, D.C. 20591. Comments may be delivered or inspected at Room 915G in FAA headquarters between 8:30 A.M. and 5 P.M., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Marx (202) 267–3075.

SUPPLEMENTARY INFORMATION: The proposed Federal action is to modify the dimensions of the Grand Canyon National Park Special Flight Rules Area (SFRA); establish new and modify existing flight-free zones; establish new and modify existing flight corridors; and establish reporting requirements for commercial sightseeing companies operating in the SFRA. In addition, the NPRM contains proposals for flight-free periods within the Park and/or an interim moratorium on additional commercial sightseeing air tours and tour operators.

The FAA and the NPS recognize that noise from commercial air tours and other flights over units of the national park system can potentially adversely impact park resources, values and visitor experience. The proposed revisions to SFAR 50–2 are consistent with the missions of both FAA and NPS and legislative requirements to enhance the environment and protect the resources of national parks. The FAA remains committed to its mission to promote, develop, and foster aviation safety, and provide for the safe and efficient use of airspace, while at the same time, recognizing the need to preserve, protect, and enhance the environment by minimizing the adverse effects of aviation on the environment.

GCNP is administered by the NPS of the Department of the Interior (DOI). The FAA invited the NPS to participate in the preparation of this Draft EA as a cooperating agency because the NPS has jurisdiction by law over and special expertise relating to the resources within the GCNP. NPS similarly participated in the rulemaking process.

The FAA has decided to grant the requests of the Bureau of Indian Affairs (BIA), and certain Native American tribes to participate as cooperating agencies in the EA. These actions will be conducted on a Government-to-Government basis per Presidential memorandum dated April 29, 1994.

Alternatives

In developing alternatives for study in this EA, the FAA was guided by its statutory mission and objectives, as well as that of the NPS, and by the purpose and need for the proposed action, as

discussed in Chapter 1 of the Draft EA. In developing these alternatives, the FAA and NPS recognized that there are gaps in relevant information and scientific uncertainty. The lack of complete and available information concerning noise methodology, metric, and the proper definition of substantial restoration of natural quiet, was documented in our preliminary comments on the NPS Report to Congress. Although both agencies recognize that there are unresolved issues, the FAA and NPS have determined that it is in the public interest to proceed with this rulemaking. Both agencies deem this rulemaking important for substantially restoring the natural quiet in the GCNP, as required under the National Park Overflights Act.

The Draft EA evaluates the environmental effects of the no action alternative and the NPRM, except the curfew, variable flight free period, and temporary cap, in an initial study area, in the near term. See, FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. The Final EA will evaluate the curfew, variable flight free period, and temporary cap. It will also evaluate the impacts of the NPRM over the entire GCNP in 1995 and future years, as well as socio-economic impacts. See, 40 CFR 1502.22.

Based on the final EA to be completed after the close of the Draft EA and associated comment period, the FAA will determine whether a Finding of No Significant Impact may be issued or an Environmental Impact Statement is required before any final rule is issued.

For further information contact: Mr. William J. Marx, Division Manager, ATA–300, Federal Aviation Administration, 800 Independence Avenue, Washington D.C. 20591. Requests for copies of the document should also be sent to the above address.

Issued in Washington D.C. on August 20, 1996.

Jeff Griffith,

Program Director of Air Traffic Airspace Management.

[FR Doc. 96–21350 Filed 8–19–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20 and 25

[REG–208215–91]

RIN 1545–AR52

Disclaimer of Interests and Powers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the treatment of disclaimers for estate and gift tax purposes. The regulations propose to clarify certain provisions governing the disclaimer of property interests and powers and, in addition, to conform the regulations to court decisions holding the current regulation invalid with respect to the disclaimer of joint property interests. The proposed regulations will affect persons who disclaim interests, powers or interests in jointly owned property after the effective date of these regulations.

DATES: Written comments and requests for a public hearing must be received by November 19, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–208215–91), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–208215–91), Courier's Desk Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternately, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__ regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Dale Carlton, (202) 622–3090; concerning submissions, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend the Estate and Gift Tax Regulations (26 CFR parts 20 and 25) under sections 2041, 2046, 2056, 2511, 2514, and 2518, relating to the disclaimer of interests in property and powers over property.

1. Interests and Powers Subject to the Disclaimer Rules

Under section 2518(a), if a person makes a qualified disclaimer, then for transfer tax purposes, the interest disclaimed is treated as never having passed to the person disclaiming. Under section 2518(b)(2)(A), in order to have a qualified disclaimer, an interest must be disclaimed within 9 months of the date of ''the transfer creating the interest'' in the person disclaiming. A person to whom any interest passes by reason of the exercise or lapse of a general power of appointment must disclaim the interest passing within 9 months after the exercise or lapse.

The current regulations provide that section 2518 applies to the disclaimer of interests or powers created pursuant to ''taxable transfers'' made after December 31, 1976. They further provide that the 9-month period within which the disclaimer must be made is to be determined with reference to the ''taxable transfer'' creating the interest in the disclaimant. The term ''taxable transfer'' was incorporated into the regulation based on a statement in the legislative history underlying the enactment of section 2518. H.R. Conf. Rep. No. 1515, 94th Cong., 2d Sess. 623 (1976).

Because the reference point under the regulation is the ''taxable transfer'' creating the interest, the existing regulation could be viewed as implying that the disclaimer of an interest created in a transfer that is outside the scope of the estate or gift tax need not comply with the requirements of section 2518. For example, if the disclaimed property constitutes an interest in foreign situs property created pursuant to a transfer by a nonresident alien donor or decedent, the transfer by the nonresident alien would not be within the scope of the gift tax or estate tax. However, a disclaimer of such an interest would have to comply with section 2518; otherwise, there could be transfer tax consequences to the disclaimant.

Similarly, the regulations do not specifically address the disclaimer of a property interest passing as a result of the lapse or release of a general power of appointment created on or before October 21, 1942. Under sections 2041(a)(1) and 2514(a), the lapse or release of a pre-1942 power is not subject to transfer tax.

The scope of the term ''taxable transfer'', as used in § 25.2511–1(c)(2), a related provision governing the disclaimer of interests created in taxable transfers made prior to January 1, 1977, was considered in the Eighth Circuit

decision in *United States* v. *Irvine*, 981 F.2d 991 (8th Cir. 1992), *rev'd*, 114 S.Ct 1473 (1994), and in *Ordway* v. *United States*, 908 F.2d 890 (11th Cir. 1991). In these cases, the disclaimant argued that a disclaimer that did not satisfy the requirements of § 25.2511- 1(c)(2) was nonetheless effective for estate and gift tax purposes because the trust interest that was disclaimed was created pursuant to a transfer in trust made prior to the enactment of the federal gift tax. Accordingly, the disclaimant argued that the interest was not created in a ''taxable transfer'' prior to January 1, 1977, the regulation did not apply and the disclaimer had only to be effective under state law to avoid federal tax. The Service argued in both cases that the term ''taxable transfer'' references a generic completed gift under § 25.2511–2 of the regulations. The Eleventh Circuit agreed with the Service in *Ordway*, while the Eighth Circuit disagreed in *Irvine*. The Supreme Court did not resolve this issue in its review of *Irvine*. The Court concluded that even if § 25.2511–2 did not apply, the disclaimer caused the transfer of an interest that had not been timely disclaimed, and the transfer was subject to gift tax. In view of the conflicting Eighth and Eleventh Circuit decisions in *Irvine* and *Ordway*, the Treasury and the IRS believe that it is appropriate to clarify the regulations.

2. Disclaimer of Jointly-Owned Property

The current regulations provide, in general, that in order to be a qualified disclaimer under section 2518, a surviving joint tenant's disclaimer of *both* an interest passing to the joint tenant on the creation of the tenancy, and the survivorship interest in the joint tenancy or tenancy by the entirety, must be made within 9 months after the transfer creating the tenancy. Further, a joint tenant cannot make a qualified disclaimer of any portion of a joint interest attributable to consideration furnished by that tenant. t

Section 25.2518–2(c)(4)(ii) provides a special rule with respect to joint tenancies and tenancies by the entirety in real property created after 1976 but prior to 1982. During that period, section 2515 applied in determining the gift tax consequences of the creation of a joint tenancy with right of survivorship or tenancy by the entirety in real property between husband and wife. Under section 2515, the creation of the tenancy was not treated as a gift subject to gift tax unless the parties elected to treat the creation of the tenancy as a gift. Rather, a transfer subject to gift tax occurs on the termination of the tenancy (other than by reason of the death of one of the tenants) if the proceeds of termination are not divided according to the consideration furnished by each party to the tenancy. Under § 25.2518–2(c)(4)(ii), in general, an interest in a tenancy created between 1976 and 1982 can be disclaimed within 9 months of the date of death of the first joint tenant to die, provided no election was made under section 2515 to treat the creation of the tenancy as a gift. The disclaimant can disclaim up to the portion of the tenancy included in the decedent's gross estate under section 2040.

Section 2515 was enacted in the Internal Revenue Code of 1954, effective for tenancies created after December 31, 1954, and was repealed with respect to tenancies created after December 31, 1981, by the Economic Recovery Tax Act of 1981. The Technical and Miscellaneous Revenue Act of 1988 added section 2523(i)(3) which provides that, where the spouse of a donor is not a citizen of the United States, the principles of section 2515, as such section was in effect before its repeal, shall apply (except for the provisions providing for an election), in determining the gift tax consequences of the creation of a joint tenancy or tenancy by the entirety in real property between husband and wife.

Although section 2515 was effective for tenancies created after 1954 and before 1982, and, in addition, the principles of section 2515 are currently effective for tenancies created on or after July 14, 1988, where the donee spouse is not a citizen, the special rule in the current regulation applies only to tenancies subject to section 2515 created after 1976 and before 1982.

The validity of the current regulations with respect to joint interests that are unilaterally severable has been the subject of repeated litigation. In *Kennedy* v. *Commissioner*, 804 F.2d 1332 (7th Cir. 1986), the court held that the surviving spouse's survivorship interest in the decedent's one-half interest in jointly held real property was created on the decedent's death since, prior to that time, the decedent could have unilaterally severed the interest and defeated the spouse's survivorship right in that interest. Accordingly, the court held that the survivorship interest could be disclaimed within 9 months of the decedent's death. The court concluded that the current regulations are invalid to the extent that they require a survivorship interest in a severable joint tenancy to be disclaimed within 9 months of the creation of the tenancy. In *Estate of Dancy* v. *Commissioner*, 872 F.2d 84 (4th Cir. 1989) (involving personal property), and *McDonald* v. *Commissioner*, 853 F.2d 1494 (8th Cir. 1988) (involving real property), the courts also held the regulations invalid.

In *McDonald*, the Eighth Circuit remanded the case to the Tax Court to determine if the disclaimer was otherwise qualified under section 2518. On remand, the Service argued that since the joint property was attributable entirely to consideration furnished by the disclaiming spouse, the spouse could not disclaim any interest in the property under section 2518. The Tax Court rejected this argument in *McDonald* v. *Commissioner*, T.C.M. 1989–140.

The Service announced in A.O.D. CC–1990–06 (Feb. 7, 1990) that it will follow these decisions.

3. Disclaimer of Joint Bank Accounts

For gift tax purposes, the creation of a joint bank account is treated as an incomplete transfer since, generally, the contributing joint tenant may unilaterally withdraw contributed funds without the consent of the other joint tenant. Accordingly, unless a noncontributing joint tenant has withdrawn the funds, the transfer to a joint bank account does not become complete before the death of the first joint tenant.

Explanation of Provisions

1. Interests and Powers Subject to the Disclaimer Rules

The proposed amendment clarifies that the application of section 2518, or the commencement of the 9-month period, is not dependent on the actual imposition of a transfer tax when the interest to be disclaimed is created. The proposed amendment substitutes the statutory language of section 2518(b)(2)(A), ''transfer creating the interest,'' for ''taxable transfer'' as the reference point for determining the scope of the regulations as well as when the time period for making the disclaimer commences. Under the proposed amendment, the term ''transfer creating the interest'' includes any inter vivos transfer that would be a completed gift under the gift tax regulations, whether or not a gift tax liability arises on the transfer and whether or not the transfer comes within the scope of the gift tax. Similarly, the amendment clarifies that, for testamentary transfers, the transfer creating the interest occurs on the date of the decedent's death, whether or not an estate tax is imposed on the transfer and whether or not the transfer comes within the scope of the estate tax. The amendment also clarifies that, in the

case of a disclaimer of an interest passing pursuant to the exercise, lapse, or release of a general power of appointment, the disclaimer must be made within 9 months of the exercise, lapse, or release of the power, regardless of whether the exercise, lapse, or release is subject to estate or gift tax. The proposed regulations make conforming changes to the estate and gift tax regulations.

2. Disclaimer of Jointly-Owned Property

The proposed amendments would revise the regulations to provide that, in general, if a joint tenancy may be unilaterally severed by either party, then a surviving joint tenant may disclaim the one-half survivorship interest in property held in joint tenancy with right of survivorship within 9 months of the death of the first joint tenant to die, even if the surviving joint tenant provided some or all of the consideration for the creation of the tenancy.

The rationale of the courts in *Dancy, Kennedy,* and *McDonald* does not apply to joint interests that cannot be unilaterally severed under applicable state law, such as interests held in tenancy by the entirety. In tenancies by the entirety, the donee spouse's joint interest in the property that cannot be unilaterally severed is created on the date the tenancy is created. Therefore, the proposed amendment to the regulations would reaffirm that any interest in a nonseverable cotenancy, including the survivorship interest, must be disclaimed within 9 months of the date of the creation of the tenancy. However, the Service requests comments on whether or under what circumstances (e.g., tenancy by the entirety ownership of a personal residence) the rule applicable to unilaterally severable interests should apply to interests that are not unilaterally severable.

The proposed amendments would extend the special rule in § 25.2518–2(c)(4)(ii) to tenancies created after December 31, 1954, and on or before December 31, 1981, the entire period during which section 2515 was in effect. In addition, the special rule would be expanded to include tenancies created on or after July 14, 1988, where the spouse of the donor is not a United States citizen. Under section 2523(i)(3), the creation of such tenancies is also subject to the rules of former section 2515. The special rule reflects the gift tax treatment of the creation of a joint tenancy or tenancy by the entirety that was subject to section 2515. The relief afforded by the special rule will apply to all tenancies that were subject on creation to section 2515. Under the special rule, the amount that the surviving joint tenant can disclaim is dependent on the amount that is includible in the decedent's gross estate.

3. Disclaimer of Joint Bank Accounts

The proposed regulations provide specific rules to address the disclaimer of joint bank accounts. Because the transfer creating the interest in the funds remaining in the bank account at the death of the first joint tenant to die occurs at that tenant's death, the 9-month period for making the qualified disclaimer commences on the death of the first joint tenant.

The proposed regulations also clarify that a surviving joint tenant cannot disclaim any portion of the account attributable to that survivor's contribution to the account. These contributed funds are property owned by the survivor during the cotenancy and the survivor cannot disclaim property the survivor has always owned and never transferred. Further, the proposed regulations clarify that this rule applies even if only one-half of the property is included in the decedent's gross estate under section 2040(b) because the joint tenants are married.

The proposed regulations also clarify the estate tax treatment of a disclaimed interest in a joint bank account. State law generally treats a disclaimant as predeceasing the decedent with respect to the disclaimed interest. The disclaimed interest in a joint bank account (the creation of which is treated as an incomplete gift under the gift tax regulations), would lose its character as joint property and pass through the decedent's probate estate. Accordingly, under such circumstances, the interest disclaimed is subject to inclusion in the decedent's gross estate under section 2033, rather than section 2040(a) (providing for inclusion based on the contribution of each tenant) or section 2040(b) (providing for inclusion of one-half the property in the case of certain joint tenancies between spouses). The balance of the account not subject to the disclaimer retains its character as joint property and is includible in the decedent's gross estate under either section 2040(a) or section 2040(b).

These rules are also made applicable to joint brokerage accounts, since the transfer tax treatment of these accounts generally parallels the treatment of joint bank accounts. See Rev. Rul. 69–148, 1969–1 C.B. 226.

Proposed Effective Dates

The amendments to §§ 25.2518–1(a) and 25.2518–2(c)(3) (substituting the statutory language in section 2518(b)(2)(A) ''transfer creating the interest,'' for ''taxable transfer'') and conforming changes to §§ 20.2041–3(d)(6)(i), 20.2046–1, 20.2056(d)–2(a) and (b), 25.2511–1(c)(1), 25.2514–3(c)(5), are proposed to be effective for transfers creating the interest or power to be disclaimed made after the date of publication as final regulations in the Federal Register. However, Treasury and the IRS do not view these amendments as prescribing any new rules for applying section 2518.

The amendments to § 25.2518–2(c)(4) (relating to the disclaimer of joint property and bank accounts) are proposed to be effective for disclaimers made after the date these regulations are published in the Federal Register as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Dale Carlton, Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 20 and 25 are proposed to be amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 20.2041–3 is amended as follows:

1. Paragraph (d)(6)(i) is amended by revising the first sentence and by adding a new second sentence.

2. Paragraph (d)(6)(iii) is added.

The additions and revisions read as follows:

§ 20.2041–3 Powers of appointment created after October 21, 1942.

* * * * *

(d) * * *

(6)(i) A disclaimer or renunciation of a general power of appointment created in a transfer made after December 31, 1976, is not considered to be the release of the power if the disclaimer or renunciation is a qualified disclaimer as described in section 2518 and the corresponding regulations. For rules relating to when the transfer creating the power occurs, see § 25.2518–2(c)(3). * * *

* * * * *

(iii) The first and second sentences of paragraph (d)(6)(i) of this section are effective for transfers creating the power to be disclaimed made after the date of publication as final regulations in the Federal Register.

* * * * *

Par. 3. Section 20.2046–1 is revised to read as follows:

§ 20.2046–1 Disclaimed property.

(a) This section shall apply to the disclaimer or renunciation of an interest in the person disclaiming by a transfer made after December 31, 1976. For rules relating to when the transfer creating the interest occurs, see § 25.2518–2 (c)(3) and (c)(4) of chapter 12. If a qualified disclaimer is made with respect to such a transfer, the Federal estate tax provisions are to apply with respect to the property interest disclaimed as if the interest had never been transferred to the person making the disclaimer. See section 2518 and the corresponding regulations for rules relating to a qualified disclaimer.

(b) The first and second sentences of this section are effective for transfers creating the interest to be disclaimed made after the date of publication as final regulations in the Federal Register.

Par. 4. Section 20.2056(d)–2 is amended as follows:

1. Paragraph (a) is amended by revising the first sentence and adding a new sentence after the first sentence, and paragraph (b) is revised.

2. A new paragraph (c) is added.

The additions and revisions read as follows:

§ 20.2056(d)–2 Marital deduction; effect of disclaimers of post-December 31, 1976 transfers.

(a) * * * If a surviving spouse disclaims an interest in property passing to such spouse from the decedent created in a transfer made after December 31, 1976, the effectiveness of the disclaimer will be determined by section 2518 and the corresponding regulations. For rules relating to when the transfer creating the interest occurs, see § 25.2518–2 (c)(3) and (c)(4) of chapter 12. * * *

(b) Disclaimer by a person other than a surviving spouse. If an interest in property passes to a person other than the surviving spouse from a decedent, and the interest is created in a transfer made after December 31, 1976, and—

(1) The person other than the surviving spouse makes a qualified disclaimer with respect to such interest, and

(2) The surviving spouse is entitled to such interest in property as a result of such disclaimer, the disclaimed interest is treated as passing directly from the decedent to the surviving spouse. For rules relating to when the transfer creating the interest occurs, see § 25.2518–2 (c)(3) and (c)(4) of chapter 12.

(c) *Effective date.* The first and second sentences of paragraphs (a) and (b) of this section are effective for transfers creating the interest to be disclaimed made after the date of publication as final regulations in the Federal Register.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 25.2518–2 is also issued under 26 U.S.C. 2518(b). * * *

Par. 6. Section 25.2511–1 is amended as follows:

1. In paragraph (c)(1), the fourth sentence is revised.

2. A new paragraph (c)(3) is added.

The additions and revisions read as follows:

§ 25.2511–1 Transfers in general.

* * * * *

(c)(1) * * * However, in the case of a transfer creating an interest in property (within the meaning of § 25.2518–2 (c)(3) and (c)(4)) made after December 31, 1976, this paragraph (c)(1) shall not apply to the donee if, as a result of a qualified disclaimer by the donee the interest passes to a different donee. * * *

* * * * *

(3) The fourth sentence of paragraph (c)(1) of this section is effective for transfers creating an interest to be disclaimed made after the date of publication as final regulations in the Federal Register.

* * * * *

Par. 7. Section 25.2514–3 is amended as follows:

1. Paragraph (c)(5) is amended by revising the first sentence and adding a new second sentence.

2. A new paragraph (c)(7) is added.

The additions and revisions read as follows:

§ 25.2514–3 Powers of appointment created after October 21, 1942.

* * * * *

(c) * * *

(5) * * * A disclaimer or renunciation of a general power of appointment created in a transfer made after December 31, 1976, is not considered a release of the power for gift tax purposes if the disclaimer or renunciation is a qualified disclaimer as described in section 2518 and the corresponding regulations. For rules relating to when a transfer creating the power occurs, see § 25.2518–2(c)(3). * * *

* * * * *

(7) The first and second sentences of paragraph (5) of § 25.2514–3(c) are effective for transfers creating the power to be disclaimed made after the date of publication as final regulations in the Federal Register.

* * * * *

Par. 8. Section 25.2518–1 is amended as follows:

1. Paragraph (a)(1) is revised.

2. In paragraph (a)(2), the third, fourth, and fifth sentences of the *Example* are revised and a new sentence is added after the third sentence.

3. A new paragraph (a)(3) is added.

The additions and revisions read as follows:

§ 25.2518–1 Qualified disclaimers of property; In general.

(a) * * * (1) *In general.* The rules described in §§ 25.2518–1 through 25.2518–3 apply to the qualified disclaimer of an interest in property which is created in the person disclaiming by a transfer made after December 31, 1976. In general, a qualified disclaimer is an irrevocable and unqualified refusal to accept the ownership of an interest in property. For rules relating to the determination of when a transfer creating an interest occurs, see § 25.2518–2(c) (3) and (4).

(2) * * * The transfer creating the remainder interest in the trust occurred in 1968. See § 25.2511–1(c)(2). Therefore, section 2518 does not apply to the disclaimer of the remainder interest because the transfer creating the interest was made prior to January 1, 1977. If, however, W had caused the gift to be incomplete by also retaining the power to designate the person or persons to receive the trust principal at death, and, as a result, no transfer (within the meaning of § 25.2511–1(c)(2)) of the remainder interest was made at the time of the creation of the trust, section 2518 would apply to any disclaimer made after W's death with respect to an interest in the trust property.

(3) Section 25.2518–1(a)(1) is effective for transfers creating the interest to be disclaimed made after the date of publication as final regulations in the Federal Register.

* * * * *

Par. 9. Section 25.2518–2 is amended as follows:

1. Paragraph (c)(3) is redesignated as paragraph (c)(3)(i).

2. Newly designated paragraph (c)(3)(i) is amended as follows:

a. In the first, eighth, and eleventh sentences, the word ''taxable'' is removed in each place it appears.

b. In the third and ninth sentences, the language ''taxable transfer'' is removed and ''transfer creating an interest'' is added in each place it appears.

c. The fourth, fifth, sixth, and seventh sentences are revised.

d. A new sentence is added after the fourth sentence.

3. A new paragraph (c)(3)(ii) is added.

4. Paragraph (c)(4) is revised.

5. In paragraph (c)(5), *Example (7)* is revised.

6. In paragraph (c)(5), *Example (9)* is redesignated as *Example (13)* and newly designated *Example (13)* is revised.

7. In paragraph (c)(5), *Example (8)* is redesignated as *Example (9)* and newly designated *Example (9)* is revised.

8. In paragraph (c)(5), *Example (10)* is redesignated as *Example (12)* and the first sentence of newly designated *Example (12)* is revised.

9. In paragraph (c)(5), new *Examples (8), (10), (11), (14),* and *(15),* are added.

The additions and revisions read as follows:

§ 25.2518–2 Requirements for a qualified disclaimer.

* * * * *

(c) * * *

(3)(i) * * * With respect to transfers made by a decedent at death or transfers that become irrevocable at death, the transfer creating the interest occurs on the date of the decedent's death, even if an estate tax is not imposed on the transfer. For example, a bequest of foreign-situs property by a nonresident alien decedent is regarded as a transfer creating an interest in property even if the transfer would not be subject to estate tax. If there is a transfer creating an interest in property during the transferor's lifetime and such interest is later included in the transferor's gross estate for estate tax purposes (or would have been included if such interest were subject to estate tax), the 9-month period for making the qualified disclaimer is determined with reference to the earlier transfer creating the interest. In the case of a general power of appointment, the holder of the power has a 9-month period after the transfer creating the power in which to disclaim. If a person to whom any interest in property passes by reason of the exercise, release, or lapse of a general power desires to make a qualified disclaimer, the disclaimer must be made within a 9-month period after the exercise, release, or lapse regardless of whether the exercise, release, or lapse is subject to estate or gift tax. * * *

(ii) Sentences 1, 3 through 10, and 12 of paragraph (c)(3)(i) of this section are effective for transfers creating the interest to be disclaimed made after the date of publication as final regulations in the Federal Register.

(4) *Joint property*—(i) *Interests that are unilaterally severable.* Except as provided in paragraph (c)(4)(iv) of this section with respect to joint bank accounts and joint brokerage accounts, in the case of an interest in a joint tenancy with right of survivorship or a tenancy by the entirety that either joint tenant can sever unilaterally under local law, a qualified disclaimer of the interest to which the disclaimant succeeds as donee upon creation of the tenancy must be made no later than 9 months after the creation of the tenancy. A qualified disclaimer of the survivorship interest to which the survivor succeeds by operation of law upon the death of the first joint tenant to die must be made no later than 9 months after the death of the first joint tenant to die. See, however, section 2518(b)(2)(B) for a special rule in the case of disclaimers by persons under age 21. Except as provided in paragraph (c)(4)(iii) of this section (with respect to certain tenancies in real property created after 1954 and before 1982 and certain tenancies created on or after July 14, 1988), the interest that may be disclaimed within 9 months after the death of the first joint tenant to die is the interest to which the disclaimant succeeds by right of survivorship, regardless of the portion of the property attributable to consideration furnished by the disclaimant and regardless of the portion of the property that is included in the decedent's gross estate under section 2040. See § 25.2518–2(c)(5), *Example (7).*

(ii) *Interests that are not unilaterally severable.* Except as provided in paragraph (c)(4)(iii) of this section with respect to interests created after 1954 and before 1982 and certain interests created after July 14, 1988, if an interest in joint property with right of survivorship or an interest held as a tenant by the entirety is not unilaterally severable under local law, a qualified disclaimer of the interest or any portion of the interest must be made no later than 9 months after the transaction creating the tenancy. A tenant by the entirety or other cotenant who cannot unilaterally sever the interest under applicable local law cannot make a qualified disclaimer of any portion of the joint interest to the extent attributable to consideration furnished by that tenant even if the disclaimer is made within 9 months of the creation of the tenancy. See § 25.2518–2(c)(5), *Example (8).*

(iii) *Tenancies in real property between spouses created before 1982 and certain tenancies in real property between spouses created on or after July 14, 1988.* In the case of a joint tenancy between spouses or a tenancy by the entirety in real property created after 1954 and before 1982 where no election was made under section 2515, or a joint tenancy between spouses or a tenancy by the entirety in real property created on or after July 14, 1988, to which section 2523(i)(3) applies (relating to the creation of a tenancy where the spouse of the donor is not a United States citizen), the surviving spouse must make a qualified disclaimer no later than 9 months after the death of the first spouse to die. The surviving spouse may disclaim any portion of the joint interest that is includible in the decedent's gross estate under section 2040. See § 25.2518–2(c)(5), *Examples (9) and (10).*

(iv) *Special rule for joint bank and brokerage accounts established between spouses or between persons other than husband and wife.* In the case of a transfer to a joint bank account or a joint brokerage account, if a transferor may unilaterally withdraw the transferor's own contributions from the account without the consent of the other cotenant, the transfer creating the survivor's interest in a decedent's share of the account occurs on the death of the deceased cotenant. Accordingly, if a surviving joint tenant desires to make a qualified disclaimer with respect to funds contributed by a deceased cotenant, the disclaimer must be made within 9 months of the cotenant's death. The surviving joint tenant may not disclaim any portion of the joint account attributable to consideration furnished by that surviving joint tenant. See § 25.2518–2(c)(5), *Examples 13, 14 and 15,* regarding the treatment of disclaimed interests under sections 2518, 2033 and 2040.

(v) *Effective date.* This paragraph (c)(4) is effective for disclaimers made after the date of publication as final regulations in the Federal Register.

(5) *Examples.* * * *

* * * * *

Example (7). On February 1, 1990, A purchased real property with A's funds. Title to the property was conveyed to ''A and B, as joint tenants with right of survivorship.'' Under applicable state law, the joint interest is unilaterally severable by either tenant. B dies on May 1, 1997, and is survived by A. On January 1, 1998, A disclaims the one-half survivorship interest in the property to which A succeeds as a result of B's death. Assuming that the other requirements of section 2518(b) are satisfied, A has made a qualified disclaimer of the one-half survivorship interest (but not the interest retained by A upon the creation of the tenancy, which may not be disclaimed by A). The result is the same whether or not A and B are married and regardless of the proportion of consideration furnished by A and B in purchasing the property.

Example (8). On March 1, 1997, A purchases a parcel of real property that is conveyed to A and A's spouse, B, as tenants by the entirety. A provides the consideration for the purchase. Under applicable state law, the tenancy cannot be unilaterally severed by either tenant. In order to be a qualified disclaimer, any disclaimer by B of B's interest in the property must be made within 9 months of the creation of the tenancy (i.e., within 9 months of March 1, 1997). Since A provided the entire consideration for the property and the tenancy is not unilaterally severable, A may not disclaim any interest in the tenancy.

Example (9). On March 1, 1977, H and W purchase a tract of vacant land which is conveyed to them as tenants by the entirety. The entire consideration is paid by H. H does not elect, under section 2515, to have the transaction treated as a transfer for purposes of Chapter 12. H dies on June 1, 1997. W can disclaim one-half of the joint interest because this is the interest includible in H's gross estate under section 2040(b). Assuming that W's disclaimer is received by the executor of H's estate no later than 9 months after June 1, 1997, and the other requirements of section 2518(b) are satisfied, W's disclaimer of one-half of the property would be a qualified disclaimer because the transfer which created W's interest is treated as not occurring until H's death, since no election was made under section 2515. The result would be the same if the property was held in joint tenancy with right of survivorship that was unilaterally severable under local law.

Example (10). Assume the same facts as in example (9) except that the land was purchased on March 1, 1989, and W is not a United States citizen. W has until 9 months after June 1, 1997, to make a qualified disclaimer, and can disclaim the entire joint interest because this is the interest includible in H's gross estate under section 2040(a). The result would be the same if the property was held in joint tenancy with right of survivorship that was unilaterally severable under local law.

Example (11). In 1986, spouses A and B purchased a personal residence taking title as joint tenants with right of survivorship. Under applicable state law, the interest in the tenancy may be unilaterally severed by either party. B dies on July 10, 1997. A wishes to disclaim the one-half undivided interest to which A would succeed by right of survivorship. If A makes the disclaimer, the property interest would pass under B's will to their child C. C, an adult, and A resided in the residence at B's death and will continue to reside there in the future. A continues to own a one-half undivided interest in the property. Assuming that the other requirements of section 2518(b) are satisfied, A may make a qualified disclaimer with respect to the one-half undivided survivorship interest in the residence if A delivers the written disclaimer to the personal representative of B's estate by April 10, 1998, since A is not deemed to have accepted the interest or any of its benefits prior to that time and A's occupancy of the residence after B's death is consistent with A's retained undivided ownership interest.

Example (12). H and W, husband and wife, reside in state X, a community property state. * * *

Example (13). On July 1, 1990, A opens a bank account that is held jointly with B, A's spouse, and transfers $50,000 of A's money to the account. A and B are United States citizens. A can regain the entire account without B's consent. The transfer is not a completed gift under § 25.2511–1(h)(4). A dies on August 15, 1997, and B disclaims the entire amount in the bank account on October 15, 1997. Assuming that the remaining requirements of section 2518(b) are satisfied, B made a qualified disclaimer under section 2518(a) because the disclaimer was made within 9 months after A's death at which time B had succeeded to full dominion and control over the account. Under state law, B is treated as predeceasing A with respect to the disclaimed interest. The disclaimed account balance passes through A's probate estate and is no longer joint property includible in A's gross estate under section 2040. The entire account is, instead, includible in A's gross estate under section 2033. The result would be the same if A and B were not married.

Example (14). The facts are the same as *Example (13),* except that B, rather than A, dies on August 15, 1997. A may not make a qualified disclaimer with respect to any of the funds in the bank account, because A furnished the funds for the entire account and A did not relinquish dominion and control over the funds.

Example (15). The facts are the same as *Example (13),* except that B disclaims 40 percent of the funds in the account. Since, under state law, B is treated as predeceasing A with respect to the disclaimed interest, the 40 percent portion of the account balance that was disclaimed passes as part of A's probate estate, and is no longer characterized as joint property. This 40 percent portion of the account balance is, therefore, includible in A's gross estate under section 2033. The remaining 60 percent of the account balance that was not disclaimed retains its character as joint property and, therefore, is includible in A's gross estate as provided in section 2040(b). Therefore, 30 percent (½ × 60 percent) of the account balance is includible in A's gross estate under section 2040(b), and a total of 70 percent of the aggregate account balance is includible in A's gross estate. If A and B were not married, then the 40 percent portion of the account subject to the disclaimer would be includible in A's gross estate as provided in section 2033 and the 60 percent portion of the account not subject to the disclaimer would be includible in A's gross estate as provided in section 2040(a), because A furnished all of the funds with respect to the account.

Margaret Milner Richardson,

Commissioner of Internal Revenue,

[FR Doc. 96–21091 Filed 8–20–96; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 009–1009; FRL–5558–1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to Missouri's Federally enforceable operating permit (FESOP) program contained in Missouri rule 10 CSR 10–6.065. These revisions are designed to ease the administrative burden on the state and on affected sources without relaxing environmental requirements.

DATES: Comments must be received on or before September 20, 1996.

ADDRESSES: Comments may be mailed to Mr. Joshua A. Tapp, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Joshua A. Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION: On March 13, 1996, Missouri submitted a request to amend the State Implementation Plan (SIP) to incorporate revisions to the FESOP program which generally affects intermediate sources. These revisions include a provision which delays the permit application deadlines by 10 months for smaller intermediate sources, and a provision which provides general permits for qualifying intermediate sources. Both of these revisions are designed to ease the administrative burden on the state and on intermediate sources without relaxing environmental requirements.

Additional revisions were made in response to comments received during Missouri's rulemaking process. These revisions clarify the meaning of the rule and improve its enforceability. Specifically, these revisions clarify: that public participation requirements are applicable, and that sources are subject to enforcement action if they inappropriately apply for and obtain a general FESOP permit and it is later determined that they do not qualify. The revisions also clarify the meaning of the term ''threshold level'' by referencing a definition used elsewhere in the Missouri regulations.

Other revisions were contemporaneously made to rule 10 CSR 10–6.065. Most of these changes affect Missouri's basic operating permit program for small sources. This program is not a Federally approved program; therefore, the EPA will not act on these revisions in this action. One revision affects Missouri's Title V operating permit program. This revision will be addressed in a later EPA action.

EPA Action: The EPA is proposing to approve the revisions that pertain to Missouri's FESOP (Intermediate) program because they ease the administrative burden of the program and because the revised program continues to meet the EPA's FESOP criteria contained in the June 28, 1989, Federal Register notice (54 FR 27274). The EPA is not proposing action on the revision to Missouri's Title V operating permit program or the multiple revisions to Missouri's basic permit program.

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

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

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

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

Unfunded Mandates

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

Through submission of this plan revision, the state and any affected local governments have elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being proposed for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this action. The EPA has also determined that this proposed action does not include a mandate that may result in estimated costs of $100 million or more to state or local governments in the aggregate or to the private sector. The EPA has determined that these rules result in no additional costs to tribal governments.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: August 8, 1996.

Delores J. Platt,

Acting Regional Administrator.

[FR Doc. 96–21284 Filed 8–20–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5557–1]

National Oil and Hazardous Substance Contingency Pollution Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Gold Coast oil site from the National Priorities List (NPL); Request for comments.

SUMMARY: EPA, Region IV, announces its intent to delete the Gold Coast Oil Site (Site) in Miami, Dade County, Florida, from the NPL and requests public comment on this action. The NPL constitutes Appendix B, 40 CFR part 300; the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) promulgated by the United States Environmental Protection Agency (EPA) pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Florida (State) have determined that all appropriate response actions under CERCLA have

been implemented by the Potentially Responsible Parties and that no further response actions are needed. Moreover, EPA and the State have determined that the remedial actions conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments on the proposed deletion from the NPL should be submitted no later than September 20, 1996.

ADDRESSES: Comments may be mailed to Brad Jackson, Remedial Project Manager, South Superfund Remedial Branch, Waste Management Division, EPA, Region IV, 345 Courtland Street, N.E., Atlanta, GA 30365.

Comprehensive information on this Site is available through the EPA, Region IV, public docket located at the regional office. The deletion docket is available for viewing, by appointment, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the EPA regional office should be directed to Debbie Jourdan, EPA, Region IV, docket office at 345 Courtland Street, N.E., Atlanta, Georgia, 30365. Ms. Jourdan may also be contacted by telephone at (404) 347–5059, extension 6217.

Background information from the regional public docket is also available for viewing at the Site information repository located at Florida International University, University Park Campus Library, Rm. AT–235, Miami, Florida, 33199. Appointments can be scheduled to review the documents locally by contacting the library at (305) 348–2463.

FOR FURTHER INFORMATION CONTACT: Brad Jackson, Remedial Project Manager, EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia, 30365, (404) 347–2643.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA, Region IV, announces its intent to delete the Gold Coast Oil Site from the NPL (Appendix B of the NCP), and request comments on this proposed deletion. EPA identifies sites that pose a significant threat to public health, welfare, or the environment and maintains an inventory of these sites through the NPL. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.66(c)(8) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if new or changing conditions warrant such actions.

EPA will accept comments concerning the proposed deletion of this site from the NPL until September 20, 1996.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), releases may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State of Florida, whether any of the following criteria are met:

- Responsible or other parties have implemented all appropriate response actions required; or
- All appropriate Fund-financed responses under CERCLA have been implemented and no further cleanup by responsible parties is appropriate, or
- The remedial investigation has shown that the release poses no significant threat to public health, welfare, or the environment and, therefore, undertaking of additional remedial measures is not appropriate.

III. Deletion Procedures

EPA, Region IV, will accept and evaluate public comments before making a final decision to delete this Site from the NPL. Comments from the local community may be the most pertinent to the deletion decision. The following procedures were used for the intended deletion of this Site:

- EPA, Region IV, has recommended deletion and has prepared the relevant documents.
- The State has concurred with the deletion decision.
- Concurrent with this National Notice of Intent to Delete, a local notice has been published in local newspapers and has been distributed to appropriate federal, state, and local officials and other interested parties.
- The Region has made all relevant documents available in the Regional Office and local site information repository.

Deletion of a site from the NPL does not itself, create, alter, or revoke and individual rights or obligations. The NPL is designed primarily for information purposes and to assist Agency management. As mentioned in Section II of this Notice, 40 CFR Section 300.425(e)(3) provides that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

The comments received during the notice and comment period will be evaluated before the final decision to delete. The Region will prepare a Responsiveness Summary, if necessary, which will address any comments received during the public comment period.

A deletion occurs when the EPA Regional Administrator publishes a notice in the Federal Register. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region IV.

IV. Basis for Intended Site Deletion

The Gold Coast Oil Site is the former location of an oil reclamation facility that operated over an 11-year period. The Site is approximately two acres in size and is located in a mixed commercial, industrial, and residential area of Miami, Florida. Poor housekeeping practices and improper disposal of wastes resulted in extensive contamination of surface and subsurface soils at levels that posed a threat to human health, welfare and/or the environment. The underlying Biscayne aquifer, a sole source of drinking water for Dade County, was also extensively contaminated at levels in excess of Federal and State Drinking Water Standards. Concern for the potential threat to the public and impact on the local drinking water supply prompted the inclusion of the Site on the National Priorities List (NPL) in September 1983.

Numerous studies were undertaken by EPA and the potentially responsible parties which documented the nature and extent of contamination. The scope and results of these studies was summarized in detail in the Interim Site Close Out Report and in other documents contained in the Site file. Community involvement and the scope of community relation activities were also documented in the Interim Site Close Out Report.

Soil remediation began in March 1989, with the excavation and offsite disposal of 683 tons of contaminated soils and hardened waste sludge. An additional 200 cubic yards of contaminated soil was excavated and removed for offsite disposal in March 1990. As discussed in the Interim Site Close Out Report, sampling and analysis of soil samples verified compliance with the ROD cleanup criteria.

A comprehensive system of groundwater monitoring, recovery, and disposal was implemented in July 1990. Contaminated groundwater was recovered through a series of wells and treated onsite with a dual column air stripping system for the removal of volatile organic compounds. The treated

groundwater was returned to the aquifer through onsite injection wells, upgradient of the recovery system.

Contaminant levels were reduced dramatically within the first year of operation of the system. Several modifications were eventually made to the groundwater recovery system to enhance its effectiveness. A summary of analytical results that document the performance of the remedial system is provided in the Site Close Out Report, February 1996.

EPA, in consultation with the State, concluded that the groundwater recovery system had achieved its goal in significantly reducing contaminant levels within the aquifer, and that continued operation of the recovery system would not provide any further reduction in contaminant levels. The system was deactivated and placed in a monitoring mode on March 15, 1994.

The groundwater recovery and treatment system recovered and treated over 80 million gallons of water. Operation of the system reduced contaminant levels by approximately 99 percent and essentially eliminated the dissolved plume.

Monitoring of the Site during the period May through November 1994, indicated continued compliance with the groundwater performance criteria, with the exception of periodic exceedances of TCE and PCE in the two shallow wells located near the center of the former plume. These periodic exceedances represented very small, isolated, areas of contamination. It was theorized that these exceedances may be the result of residual VOC contamination in soil overlying the groundwater. However, soil gas analysis conducted in proximity to monitoring wells MW–11 and MW–13, in November 1994, did not indicate the presence of any residual contamination in the unsaturated zone.

In a final effort to attain permanent compliance with the performance criteria at monitoring wells MW–11 and MW–13, the soil surrounding the wells was excavated below the water table. The excavations were approximately 15-feet square by 15-feet deep. Although a composite soil sample from each excavated stockpile did not indicate the present of any TCE or PCE, initial sampling of the groundwater in the pits indicated elevated levels of TCE and PCE. The pits remained open for several months and the water was treated using a portable compressor and air spargers. A summary of the analytical results of the sampling of groundwater from the pits was provided in the Close Out Report, February 1996.

As documented in the Close Out Report, TCE and PCE concentrations decreased with time and stabilized at levels within the performance criteria specified in the ROD. At that time, the groundwater remediation was determined to be complete, and the pits backfilled with clean fill.

Cleanup of the Gold Coast Oil site is complete. Approval of this Close Out Report will serve as certification of completion of all remedial activities at the Gold Coast Oil Site. Based on the success of the remedial action, only one year of post-certification monitoring will be performed. Should the data indicate no significant increase in the contaminant levels relative to the findings of the ''clean closure'' monitoring, the post-certification monitoring may cease. However, should the post-certification monitoring show significant increases in the contaminant levels relative to the ''clean closure'' monitoring, EPA may extend the length of the post-certification monitoring. The commitment by the PRPs to perform post-certification monitoring is provided for in the Consent Decree and the plans for monitoring described in a letter from the PRPs consultant to the EPA Remedial Project Manager dated April 17, 1992. Performance of the Post-Certification monitoring, however, does not preclude the deletion of this Site from the NPL.

Removal of all hazardous substances from the Site resulted in unlimited use and unrestricted exposure at the Site. As a result, no institutional controls were necessary at the Site. Since, the long-term groundwater response action was not certified as complete within the time period for the first Five-Year Review, a review was conducted and concluded that the remedy had been effective in attaining the remedial goals and that no further remedial response was necessary.

EPA, in consultation with the State, has determined that all necessary response actions, including final attainment of the groundwater cleanup criteria, have been met as specified in OSWER Directive 9320.2–3A. Specifically, confirmatory sampling has verified that the ROD cleanup objectives for the soil and groundwater have been achieved and the Site is protective of public health, welfare and the environment. These documents are available for review by calling the Regional Office at (404) 347–2643.

Dated: July 22, 1996.

A. Stanley Meiburg,

Acting Regional Administrator, USEPA, Region IV.

[FR Doc. 96–21178 Filed 8–20–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5556–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete Chemet Company Superfund Site, Fayette County, Tennessee, from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces its intent to delete the Chemet Company Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Tennessee Department of the Environment and Conservation (TDEC) have determined that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments must be submitted on or before September 20, 1996.

ADDRESSES: Comments may be mailed to: Robert West, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

Comprehensive information on this Site is available for viewing through the site information repositories at the following locations: Moscow City Hall, 266 Fourth Street, Moscow, TN, 38057. U.S. EPA Record Center, 345 Courtland St., N.E., Atlanta, GA, 30365.

FOR FURTHER INFORMATION CONTACT: Robert West, U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia, 30365, 404–347–3555 EXT. 2033, or 1–800–435–9233, EXT. 2033.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Environmental Protection Agency (EPA) Region 4 announces its intent to delete the Chemet Company Site from the National Priorities List (NPL), Appendix B of National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, and requests comments on this deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will accept comments on the proposal to delete this Site for thirty days after publication of this document in the Federal Register.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from, or recategorized on the NPL where no further response is appropriate. EPA, in consultation with the State of Tennessee, has concluded that the Chemet Company Site meets the following criteria for site deletion:

(i) All appropriate fund-financed response actions have been implemented; and

(ii) All appropriate response under CERCLA has been implemented.

Even if a site is deleted from the NPL, where hazardous substances remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazardous Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) EPA Region 4 issued a Record Of Decision (ROD) which addressed the Site conditions, quality assurance and control during construction, and technical criteria for satisfying the completion requirements; (2) a notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; (3) All relevant documents have been made available for public review in the local Site information repositories; and TDEC has concurred with the proposed deletion decision.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for information purposes and to assist Agency management. As mentioned in Section VI of this document, § 300.425(e)(3) of the NCP states that deletion of a Site from the NPL does not preclude eligibility for future response actions.

For deletion of this Site, EPA's Regional Office will accept and evaluate public comments of EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final action in the Federal Register. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional office.

IV. Basis for Intended Site Deletion

The following site summary is the Agency's rationale for the proposal to delete Chemet Company Site from the NPL.

A. Site Background and History

The Chemet Company Site was an antimony processing facility. Lead laden ore was processed at the facility to yield antimony. Antimony is commonly used as a fire retardant and plastics strengthener. During the years of operation, slag from the furnaces was systematically stored in unsecured stockpiles on the property. Bins, containers, and barrels of slag and other waste materials were also stored inside buildings, pending secondary treatment for disposal.

B. Engineering Evaluation/Cost Analysis (EE/CA)

In May 1993, the Site was referred to the EPA, Region 4. After a thorough review of Site information, EPA staff concluded the Site was a candidate for cleanup under Superfund Accelerated Cleanup Model (SACM) Guidelines. Sampling surveys, conducted in preparation of the EE/CA confirmed the soil was contaminated with elevated levels of lead, arsenic and antimony. Additionally, the poorly secured waste piles posed an increased risk of direct exposure to the highly concentrated lead waste. EPA staff determined that a Non-Time Critical Removal under SACM, would be an effective method to accomplish the remediation.

The Field Investigation (FI) was developed to gather sufficient information to: (1) characterize the Site, (2) define contaminants of concern and extent of contamination, (3) determine the actual or potential threat, if any, the Site poses to human health and/or the environment, and (4) aid in the development of removal/clean-up remedies that may be necessary to address any threat identified. Sampling verified the soil on-site was contaminated with lead, arsenic and antimony.

C. Removal Activities

Phase I of the removal activities consisted of excavating, segregating, and categorizing the contaminated soil over the entire Site. Contaminated areas that reached the ball field of the LaGrange-Moscow Elementary School were the first areas addressed in the removal activities. A minimum of six-inches of soil was excavated from the entire Site. Samples from the stockpiles on-site were sent to the laboratory for determination of proper disposal methods. The results of the laboratory analysis verified that most of the contaminated soil could be disposed of in a licensed solid waste landfill. Contaminated soil previously stored in an on-site building, needed to be disposed of in a licensed hazardous waste landfill because of a higher concentration of heavy metals. The two abandoned tractor trailers were pressured washed and removed from the Site.

Phase II of the removal activities consisted of the disposal of over 20,000 tons of nonhazardous contaminated soil in the South Shelby Landfill, Memphis, TN. An additional 600 tons of hazardous soil were disposed of by the Laidlaw Environmental Services, Pinewood, SC. Laboratory chemicals on-site were inventoried, segregated into compatible groups, lab packed, and disposed of properly. Contaminated metal was pressured washed and recycled by a licensed vendor. Over 120 drums of slag and 37 boxes of raw ore were categorized and disposed of properly. The on-site buildings were demolished, pressured washed, and disposed. The on-site private well was closed according to State regulations.

After the contaminated soil had been disposed of and confirmation sampling verified that on-site soil was below

cleanup levels, the entire Site was backfilled with a six-inch layer of clean soil. Finally, the Site was seeded with tall fescue grass and the damaged areas of the perimeter fence were repaired. The removal activities were completed March 23, 1995. The total cost of cleanup was 1.3 million dollars.

D. Community Relations Activities

In accordance with the requirements of CERCLA § 113(k)(2)(B) and § 117, a Community Relations Plan (CRP) was developed to establish a framework for community relations activities at the Chemet Company Site. The CRP was finalized January 1994. EPA held a Public Meeting on January 27, 1994, to describe the Superfund process and the planned EE/CA activities. On May 24, 1994, EPA held a Public Meeting to describe the Superfund Proposed Removal Plan, present the results of the EE/CA, and the Streamline Risk Assessment.

E. Summary of Operation and Maintenance

No Operation and Maintenance (O&M) is necessary at this Site.

F. How Chemet Company Meets NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from, or recategorized on the NPL where no further response is appropriate. EPA, in consultation with the State of Tennessee, has concluded that the Chemet Company Site meets the following criteria for site deletion:

(i) All appropriate fund-financed response actions have been implemented; and

(ii) All appropriate response under CERCLA has been implemented.

G. State Concurrence To Delete Chemet Company Site

The State of Tennessee concurred with the deletion of the site by letter dated July 11, 1996.

EPA, in consultation with the State of Tennessee, has concluded that the Chemet Company Site meets the following criteria for site deletion: (1) EPA and the State of Tennessee have implemented all appropriate response actions required; (2) All appropriate response under CERCLA has been implemented; and (3) the confirmation sampling done after excavation activities verified that the Chemet Site poses no significant threat to public health or the environment and, therefore, taking of further remedial measures is not appropriate. EPA and the State of Tennessee believe that the above listed criterions for deletion have been met. Subsequently, EPA is proposing deletion of the Chemet Company Site from the NPL. Documents supporting this action are available from the local repository.

Dated: July 15, 1996.

A. Stanley Meiburg,

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

[FR Doc. 96–21172 Filed 8–20–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 372

[OPPTS–400104C; FRL–5393–4]

RIN 2070-AC71

Addition of Facilities in Certain Industry Sectors; Toxic Chemical Release Reporting; Community Right-to-Know; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: In the Federal Register of June 27, 1996, EPA issued a proposed rule to add seven industry groups to the list of industries required to report under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) section 313 and section 6607 of the Pollution Prevention Act of 1990 (PPA). Except as provided in this Notice, the period for accepting comments on the proposed rule ends August 26, 1996. EPA has added additional information to the public docket prior to the close of the public comment period. This information is summarized in this document. To assure that the public and other interested parties may review and comment on the additional documents and information, EPA is extending the comment period on the proposed rule. EPA is requesting comment on the additional documents and information only. Comments must be confined to the contents of these documents.

DATES: Comments must be received by September 4, 1996.

ADDRESSES: Written comments should be submitted in triplicate to: OPPT Docket Clerk, TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-G099, 401 M St., SW., Washington, DC 20460. Comments containing information claimed as confidential must be clearly marked as confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on the proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number for this document, OPPTS-400104C and the EPA contact for this document. Unit III. of this document contains additional information on submitting comments containing information claimed as CBI.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.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 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–400104C. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

FOR FURTHER INFORMATION CONTACT: Tim Crawford at 202-260-1715, e-mail: crawford.tim@epamail.epa.gov, or Brian Symmes at 202-260-9121, e-mail: symmes.brian@epamail.epa.gov, or the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION: Electronic Availability: Electronic copies of the documents listed in Unit IV. of this document are available from the EPA Public Access gopher (gopher.epa.gov) at the Environmental Sub-Set entry under ''Rules and Regulations.''

I. Introduction

Current EPCRA section 313 reporting requirements apply to facilities classified in the manufacturing sector (Standard Industrial Classification codes 20-39) that have 10 or more full-time employees, and that manufacture, process, or otherwise use one or more listed section 313 chemicals above certain threshold amounts. EPA has been in the process of evaluating industry groups for potential addition under EPCRA section 313. EPA recently issued a proposed rule to add seven industry groups to the list of industries subject to EPCRA section 313 reporting requirements (61 FR 33588, June 27, 1996) (FRL–5379-3).

II. Description of Additional Documents and Information

EPA believes that the revised interpretation of ''otherwise use'' for purposes of EPCRA section 313 threshold calculations, as proposed in the June 27, 1996 Federal Register, may affect how certain facilities currently covered under EPCRA section 313 report. As stated in the proposal, EPA does not anticipate that this revised interpretation will significantly change the reporting status of facilities operating in the manufacturing sector because the revised interpretation is most likely to impact only those facilities that are in the business of managing waste materials from other facilities. In the proposal, EPA requested specific comment on the number of facilities within the manufacturing sector that this revised interpretation might affect. EPA has continued its efforts to refine its estimate of the quantitative impact that a revision of the otherwise use interpretation might have on reporting facilities. This Federal Register document is to notify interested parties that EPA has added information to the docket estimating the potential impact of the revised interpretation of ''otherwise use'' that includes receipt of chemicals for the purposes of further waste management activities on facilities currently covered under EPCRA section 313. This information also relates to RCRA Subtitle C Hazardous Waste facilities receiving materials from manufacturing facilities currently reporting to TRI. This information is available for public review and comment, and is contained in a document entitled *Effects of Modified TRI Otherwise Use Interpretation on Manufacturing Facilities and Other Waste Treatment and Disposal Facilities* (Ref. 1).

It has come to EPA's attention that the document entitled *Interpretive Guidance for Revised Interpretation for Otherwise Use* has not been readily available. By this Federal Register Notice, EPA is notifying all interested parties that this document has been placed in the public docket and that it is readily available.

In addition, EPA is providing additional information on potential impacts of the proposed rule on small entities in the document entitled: *Estimated Impacts on Small Entities: Refined Estimation of Company Revenue and Impacts* (Ref. 2). In particular, this document provides additional data on the distribution of company revenue and employment within selected non-manufacturing SIC codes, the average number of facilities per company, and revenue and employment data sorted by the Small Business Administration's SIC code-specific size standards.

III. Rulemaking Record

A record has been established for this rulemaking under docket number ''OPPTS-400104C'' (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 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), located at EPA Headquarters, Rm. E-B607, 401 M St., SW., Washington, DC 20460.

Any person who submits comments claimed as CBI must mark the comments as ''confidential,'' ''CBI,'' or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any person submitting comments claimed to be confidential must prepare a nonconfidential public version of the comments in triplicate that EPA can put in the public file.

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 rulemaking, as well as the public version, 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 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.

IV. References

1. USEPA/OPPT. *Effects of Modified TRI Otherwise Use Interpretation on Manufacturing Facilities and Other Waste Treatment and Disposal Facilities*. U.S. Environmental Protection Agency, Washington, DC (1996).

2. USEPA/OPPT. *Estimated Impacts on Small Entities: Refined Estimates of Company Revenue and Impacts*.. U.S. Environmental Protection Agency, Washington, DC (1996).

3. USEPA/OPPT. *Interpretive Guidance for Revised Interpretation for Otherwise Use*. U.S. Environmental Protection Agency, Washington, DC (1996).

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: August 16, 1996.

Lynn R. Goldman,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–21343 Filed 8–20–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC52

Disaster Housing Resources Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking gives notice of FEMA's intent to divest itself of its inventory of mobile homes and travel trailers which serve as disaster temporary housing and to devolve this portion of the housing program to the States. We invite public comments on the devolvement process and program development concerning State-administered disaster housing resources programs.

DATES: Comments should be received by September 20, 1996.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Agnes C. Mravcak, Chief, Housing Resources Branch, Human Services Division, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3660, (facsimile) (202) 646–2730.

SUPPLEMENTARY INFORMATION: On March 23, 1995, FEMA's report to the steering committee, National Performance Review Phase II, recommended that

FEMA divest itself of its inventory of mobile homes and travel trailers which serve as disaster temporary housing and devolve this portion of the housing program to the States.

The need for providing actual structures to serve as disaster temporary housing is infrequent. The requirement occurs only when homes are so badly damaged they cannot be repaired quickly and when the amount of available rental housing in the area is insufficient to accommodate the number of applicants requiring temporary housing.

Historically, an average of approximately two percent of all disaster housing assistance provided was in the form of a created resource. However, FEMA believes the resources of various State agencies can be mobilized to provide this housing in a timely and cost efficient manner.

FEMA will continue to administer that portion of the housing program that provides eligible applicants with direct financial assistance to repair their homes or rent other living accommodations. FEMA will also continue to make applicant eligibility determinations and refer those requiring created housing to the State.

FEMA and the State will enter into a cooperative agreement under which the State will perform the housing mission with appropriate program and administrative funding from FEMA, through the agreement or through a disaster grant. Details on the funding mechanism have yet to be determined.

Dated: July 31, 1996.

William C. Tidball,

Associate Director, Response and Recovery.

[FR Doc. 96–21295 Filed 8–20–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 94–06]

Financial Responsibility Requirements for Nonperformance of Transportation

AGENCY: Federal Maritime Commission.

ACTION: Further notice of proposed rulemaking; Extension of time to comment.

SUMMARY: The proposed rule in this proceeding (61 FR 33059, June 26, 1996) would, *inter alia*, remove the current $15 million coverage ceiling for nonperformance of transportation by passenger vessel operators, and replace the ceiling with sliding-scale coverage requirements keyed to passenger vessel operators' financial rating, length of operation in United States trades and satisfactory explanation of claims for nonperformance of transportation. At the request of American Classic Voyages Co., and good cause appearing, the time for filing comments on the proposed rule is enlarged to September 25, 1996.

DATES: Comments due on or before September 25, 1996.

ADDRESSES: Send comments (original and fifteen copies) to: [1] Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs Certification and Licensing, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573–0001, (202) 523–5796.

SUPPLEMENTARY INFORMATION: None.

Joseph C. Polking,

Secretary.

[FR Doc. 96–21240 Filed 8–20–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–268; FCC 96–317]

Advanced Television Systems and Their Impact on the Existing Television Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is continuing the process for implementation of the next era of broadcast television: digital television (DTV) service. In this action, the Commission proposes policies for developing the initial DTV Table of Allotments, procedures for assigning DTV frequencies, and plans for spectrum recovery. The Commission also proposes technical criteria for the allotment of additional DTV frequencies and provides a draft DTV Table of Allotments. These proposals are intended to provide frequencies on which broadcasters will operate digital television service and to plan for recovery of spectrum from television service for other uses.

DATES: Comments must be received on or before November 22, 1996, and reply comments on or before December 23, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Bruce Franca (202–418–2470), Alan Stillwell (202–418–2470) or Robert Eckert (202–428–2470), Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Sixth Further Notice of Proposed Rule Making in MM Docket No. 87–268, FCC 96–317, adopted July 25, 1996. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington, D.C. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Washington, D.C. 20036, (202–857–3800).

Summary of the Sixth Further Notice of Proposed Rule Making

1. In this action, the Commission is continuing the DTV implementation process by proposing policies for developing the initial DTV allotments and procedures for assigning DTV frequencies to broadcasters. The Commission also proposed technical criteria for the allotment of additional DTV frequencies and provided a draft DTV Table of Allotments. The draft Table, which shows how digital frequencies might be allotted in individual markets, is based on the principles of accommodating all eligible broadcasters, replicating existing service areas, and sound spectrum management. The Commission stated that, while it expects the final DTV Table of Allotments to be based on these principles, the Table issued in this Further Notice is a draft and revisions are anticipated. The Commission's staff will work with broadcasters and other parties to revise the Table as appropriate. The Commission said that its goals in this phase of the proceeding are to ensure that the spectrum is used efficiently and effectively through reliance on market forces, and to ensure that the introduction of digital television fully serves the public interest.

2. The Commission is proposing several primary objectives for guiding the development of DTV allotments and assignments to ensure that broadcasters will be able to transition their transmitting facilities to DTV service. The first of these principles is to fully accommodate all eligible broadcasters,

[1] The Commission also requests, but does not require, that commenters submit an electronic copy of their comments in ASCII, WordPerfect or Microsoft Word format.

i.e., the Commission will attempt to provide a second channel for DTV service for all existing NTSC broadcasters. Eligible broadcasters include: (1) all full service television broadcast stations licensees; (2) permittees authorized as of October 24, 1994; and (3) all parties with applications for a construction permit on file as of October 24, 1991, who are ultimately awarded full-service broadcast station licenses. This approach would ensure that all full service broadcasters are able to provide digital TV service.

3. The second objective is to provide, to the extent possible, all existing broadcasters with a DTV service area that is comparable to their existing NTSC service area (service replication). Broadcasters would thus be assigned channels that replicate the service areas of their existing stations.

4. The third objective is to attempt to minimize all unavoidable interference without preference to either NTSC or DTV service. The proposed allotment approach would balance unavoidable interference among both NTSC and DTV stations equally.

5. The Commission stated that it intends to consider a spectrum plan under which all future digital TV service would eventually be located in a core region of the existing VHF and UHF broadcast spectrum, namely the spectrum at VHF channels 7–13 and UHF channels 14–51. This is the area of the TV spectrum that is technically best suited for the transmission of DTV. Under this plan, the Commission would attempt to provide all broadcasters with access to a 6 MHz channel for DTV broadcasting within the core region. Because of the limited availability of spectrum and the need to accommodate all existing facilities with minimal interference among stations, however, some broadcasters would be provided transition DTV channels outside this area. These broadcasters would move their DTV operations to a channel in the core spectrum when one became available. This plan would permit the eventual recovery of 138 MHz of spectrum nationwide. This spectrum wold be obtained from the lower VHF channels, *i.e.*, channels 2–6, and the upper UHF channels, *i.e.*, channels 52–69. The Commission further observed that this plan may facilitate the early recovery of channels 60–69.

6. The FNPRM also asks for comment on an option suggested by the Association of Maximum Service Television, Inc. This approach would not attempt to concentrate DTV allotments in a core area of the spectrum. Since all channels would be available, such an approach could theoretically provide for some degree of improved service area replication and interference performance. Such an approach might also have less impact on low power TV and TV translator stations. On the other hand, this option would place more DTV stations on channels that are less desirable for broadcast operations. Further, early recovery of spectrum would be more difficult and therefore less likely.

7. The Commission also presented a number of proposals for other policies, procedures and technical criteria to be used in allotting DTV channels. These proposals include: (1) specifying the use of existing NTSC transmitter site coordinates as the reference points for the new DTV allotments; (2) deleting all existing vacant NTSC allotments to provide sufficient spectrum for DTV and, where feasible, replacing deleted NTSC vacant noncommercial allotments with new DTV allotments; (3) avoiding the use of TV channels 3, 4, and 6 to minimize interference to cable terminal devices, VCRs and FM radio service; and, (4) protecting land mobile authorizations on channels 14–20. In addition, the Commission requested comments and proposals regarding an appropriate frequency labeling scheme for DTV service.

8. The Commission proposed to continue the secondary status of low power TV and TV translator stations. However, it requested comment on ways in which to minimize the impact on low power operations.

9. The construction of an actual Table of Allotments is an extremely complex and difficult task. To fulfill this task, the Commission's our staff has developed sophisticated operations research methodology and computer software that provides the capability to produce allotment/assignment table based on alternative policy plans and to incorporate alternate allotment schemes that may be negotiated by broadcasters.

10. The Commission proposed an initial DTV Table of Allotments that is based on the principles, policies and methodologies described above. This Table, which provides a DTV allotment for all 1578 eligible broadcasters and also allows for an additional 143 DTV allotments to be reserved for future noncommercial use, meets all of the Commission's proposed policy objectives.

11. The Commission stated that it intended to provide broadcasters an opportunity to negotiate changes to the proposed DTV Table of Allotments and would consider such negotiated changes in the development of the final DTV Table. Specifically, the Commission indicated that it will permit broadcasters within a community to exchange among themselves their designated allotments. It also stated that it will permit broadcasters to develop alternative allotment/assignment plans for their local area.

12. The Commission stated that, consistent with its proposal to eliminate all existing vacant allotments, it will not accept additional applications for new NTSC stations that are filed after 30 days from the publication of this Further Notice in the Federal Register. This will provide time for filing of any applications that are currently under preparation. The Commission stated that as it processes the applications on file now and those that are filed before the end of this filing opportunity, it will continue its current policy of considering requests for waiver of its 1987 freeze *Order* (*Order*, RM–5811, Mimeo No. 4074, released July 17, 1987), on a case-by-case basis. When applications for new stations are accepted for filing, the Commission will continue its process of issuing Public Notices that ''cut-off'' the opportunity for filing competing, mutually-exclusive applications. In connection with these cut-off notices, it will allow additional competing applications to be filed after the end of this filing opportunity. The Commission indicated that while it anticipates that these applications for new NTSC TV stations on existing allotments will not have a significant negative impact on the development of the DTV Table of Allotments, it reserves the right, in specific cases, to determine that the public interest is better served if they are not granted, granted only if amended to specify reduced facilities, or granted only with a condition that limits the interference that the station would be allowed to cause.

13. The Commission stated that it also will not accept petitions for rule making proposing to amend the existing TV Table of Allotments in Section 73.606(b) of the rules, 47 CFR Section 73.606(b), to add an allotment for a new NTSC station. Other petitions to amend the TV Table of Allotments (for example, proposing to change a station's community of license or altering the channel on which it operates, including changes in which channel allotment in a community is reserved for noncommercial educational use) can continue to be filed, but any such changes to the table that include a modification of a station's authorization will be conditioned on the outcome of this DTV rule making proceeding. This termination of the opportunity to file petitions to add NTSC allotments for new stations is effective as of the close

of business on the date of adoption of this Further Notice. Any petitions that are currently on file and any rule making proceedings that are currently open will be addressed on a case-by-case basis, taking into account the impact on the draft DTV allotment table. For those pending cases in which a new NTSC channel is allotted, the Commission will make an exception to its decision to cease accepting applications for new NTSC stations, and the accompanying allotment Report and Order will specify the period of time for filing applications.

14. The Commission stated that its decision to cease accepting applications for new NTSC TV stations 30 days after publication of this Further Notice in the Federal Register and new petitions for rule making to add new NTSC allotments immediately, as indicated above, is based on the need to preserve the available spectrum for use by new DTV stations during the transition. The draft DTV Table provided herein was developed on the assumption that the existing vacant NTSC allotments for which no construction permit application is pending will be deleted. It is necessary to delete these allotments in order to provide a DTV allotment for all eligible broadcast stations. The Commission also stated that it is necessary to terminate the licensing of new NTSC as quickly as possible in order to begin the process of transitioning to DTV service. To continue to accept new applications for NTSC stations, now that the actual start of this new service is approaching, could potentially prolong the transition process. The Commission indicated that the additional 30 day period it has provided for filing new applications for NTSC construction permits will accommodate any parties who may be in the process of preparing such applications now. Accordingly, as allowed under Section 553 (b) and (d) of the Administrative Procedures Act, the Commission found that there is good cause for implementing these new policies without a notice and comment procedure and that such a procedure would be contrary to its efforts to implement DTV service.

15. With regard to modifications of existing stations, the Commission stated that it is concerned that the service area replications to be provided by the draft Table set forth herein could be substantially affected if stations make changes to their technical operations, *i.e.*, maximum effective radiated power (ERP), antenna height above average terrain (HAAT), and transmitter locations from this point on. Furthermore, continuing changes in station operations could affect broadcasters ability to comment meaningfully on the proposed Table and our ability to finalize the DTV Table of Allotments. The Commission indicated, however, that it is also concerned that freezing modifications to existing NTSC stations could pose hardships for broadcasters. The Commission noted that in many cases it may be possible to permit modification of existing stations without affecting the DTV Table. It therefore stated that it will continue to permit the filing of applications to modify the technical facilities, *i.e.*, ERP, HAAT or transmitter location, of existing or authorized NTSC TV stations. However, in order to preserve our ability to develop the DTV Table, the Commission stated that it will henceforth condition the grant of applications for modifications of technical facilities, including those for applications on file before the date of the adoption of this Further Notice but granted after that date, on the outcome of its final decision on the DTV Table of Allotments. To the extent that an existing station's service or potential for causing interference are extended into new areas by grant of an application, the condition may require the station's authorized facilities to be reduced or modified. The Commission is seeking comment on whether this condition should involve different consequences for applications for modifications on file as of the date of adoption of this Further Notice, as opposed to such applications filed after that date.

Procedural Matters

16. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR Sections 1.415 and 1.419, interested parties may file comments on or before November 22, 1996, and reply comments on or before December 23, 1996. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. You may also file comments electronically via the internet at dtvallotments@fcc.gov.

17. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rule Making in MM Docket No. 87–268. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided above in Section X.

Need for and Objectives of the Proposed Rule: In this rule making action the Commission presents proposals for the policies, procedures and technical criteria that it will use in allotting channels for broadcast digital television (DTV), plans for the recovery of a portion of the spectrum currently allocated to TV broadcasting, and a draft DTV Table of Allotments. The objective of this action is to obtain comment and information that will assist the Commission in allotting DTV channels. The Commission seeks to allot DTV channels in a manner that is most efficient for broadcasters and the public and least disruptive to broadcast television service during the period of transition from NTSC to DTV service and to recover spectrum.

Legal Basis: The proposed action is authorized under Sections 4(i), 7, 301, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157, 301, 302, 303 and 307.

Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

(1) Definition of a ''Small Business''

Under the Regulatory Flexibility Act, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The Regulatory Flexibility Act, 5 U.S.C. § 601(3) 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. A small business concern is 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''). According to the SBA's regulations, entities engaged in television broadcasting may have a maximum of $10.5 million in annual receipts in order to qualify as a small business concern. 13 CFR 121.201. This

standard also applies in determining whether an entity is a small business for purposes of the Regulatory Flexibility Act.

Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.'' While we tentatively believe that the foregoing definition of ''small business'' greatly overstates the number of television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the new rules on small business, we did not propose an alternative definition in the IRFA. Accordingly, for purposes of this Further Notice of Proposed Rule Making, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of ''small business'' as applied to television broadcast stations and to consider further the issue of the number of small entities that are television broadcasters in the future. Further, in this IRFA, we will identify the different classes of small television stations that may be impacted by the rules adopted in this Further Notice of Proposed Rule Making.

(2) Issues in Applying the Definition of a ''Small Business''

The SBA has defined ''annual receipts'' specifically in 13 CFR part 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 television stations were affiliated based on SBA's definitions, we relied on the industry data bases available to us to afford us that information.

(3) Estimates Based on Census and BIA Data

According to the Census Bureau, in 1992, there were 1,155 out of 1,478 operating television stations with revenues of less than ten million dollars. This represents 78 percent of all television stations, including non-commercial stations. *See 1992 Census of Transportation, Communications, and Utilities, Establishment and Firm Size,* May 1995, at 1–25. The Census Bureau does not separate the revenue data by commercial and non-commercial stations in this report. Neither does it allow us to determine the number of stations with a maximum of 10.5 million dollars in annual receipts. Census data also indicates that 81 percent of operating firms (that owned at least one television station) had revenues of less than $10 million.

We have also performed a separate 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. 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 would be subject to the allotment rules and policies proposed herein. 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 a worst case 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, 158 or 54 percent had annual revenues of $10.5 million or less. Using a worst case 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 worst case analysis using census data, we estimate that our rules will apply to as many as 1,155 commercial and non-commercial television stations (78 percent of all stations) that could be classified as small entities. Using a worst case 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 television 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.

The proposed DTV Table of Allotments would also affect low power television (LPTV) and TV translator stations. The Commission's records indicate that currently, there are about 1,750 licensed LPTV stations and 5,050 licensed TV translators. The Commission has also issued about 1,400 construction permits for new LPTV stations. We do not collect individual station financial data for low power television (LPTV) Stations and TV translator stations. However, based on its experience with LPTV and TV translator stations, the Commission believes that all such stations have revenues of less than $10.5 million. We also seek information on the number of low power stations that operate commercially and noncommercially.

(4) Alternative Classification of Small Stations

An alternative way to classify small television stations is by the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting. Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements. We estimate that the total numbers of commercial and noncommercial television stations with 4 or fewer employees are 132 and 136, respectively.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements: The proposals set forth in this action would involve no changes to reporting, recordkeeping and other compliance requirements beyond what is already required under the current regulations.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules: None.

Significant Alternatives to Proposed Rules Which Minimize Significant Economic Impact of Small Entities and Accomplish Stated Objectives: The DTV Table of Allotments proposed in this action will affect all of the commercial and noncommercial broadcast television stations eligible for a DTV channel in the transition period and a significant number of the low power and TV translator stations. It is expected that the proposed allotments will constitute the population of channels on which broadcasters will operate DTV service in the future. Allotment of these channels is therefore expected to be very important to the broadcast community. All of the affected stations will have to obtain new transmission facilities and, to a varying extent, production equipment to operate on the new DTV channels. The cost of equipment to operate on these new channels is expected to vary from $750,000 upwards to $10 million. The actual cost of equipment is expected to vary in accordance with the degree to which the station becomes involved in DTV programming and origination.

The proposed DTV Table of Allotments will also affect low power television (LPTV) and TV translator stations. Total investment in the LPTV and TV translator facilities is estimated to be about $150–$250 million. Studies by the FCC staff indicate that there is not sufficient spectrum to accommodate both low power stations and DTV stations. These studies estimate that up to about one-third of all LPTV stations and one-quarter of all TV translators may have to cease operation to make way for DTV stations. In general, most LPTV stations within major markets will be affected, while rural operations will be affected to lesser degrees. In this regard, we note that, at our December 12, 1995, *en banc* meeting on digital television, Mr. Sherwin Grossman of the Community Broadcasters Association expressed concern about the impact that implementation of DTV service would have on the low power TV industry. He argued that to avoid affecting low power TV service we should pick a date or range of dates and require all existing stations to convert to DTV service, rather than giving them a second channel, and that we should not look to recover TV spectrum until everyone who needs broadcast service is able to receive it. Similarly, Abacus Television (Abacus), in comments submitted in response to our *Fourth Further Notice and Third Notice of Inquiry* in this proceeding, 60 FR 42130 (August 15, 1995), argued that we should attempt to protect low power stations in order to protect the unique and diverse services that low power stations provide the public.

The process of creating DTV channel allotments is an optimization task that offers a great number of possible alternative ''mixes'' of channel allotments for each community. In evaluating the merits of allotment alternatives, the Commission intends to make every effort to accommodate the needs and concerns of all affected parties. We also intend to consider negotiated allotment/assignment agreements submitted by broadcasters. We expect that the final Table that is adopted will contain a number of revisions of the allotments proposed herein.

As indicated above, we also intend to consider policies for minimizing the impact of our DTV allotment and spectrum recovery proposals on low power stations. In particular, we are proposing to permit displaced low power stations to apply for a suitable replacement channel in the same area without being subject to competing applications. We will also permit low power stations to operate until a displacing DTV station or new service provider is operational. Further, we are proposing to allow low power stations to file non-window displacement relief applications to change their operating parameters to cure or prevent interference caused to or received from a DTV station or other protected service. Finally, we intend to explore other possibilities that would preserve access to LPTV programming. One approach would be to require DTV stations to devote a portion of their channel capacity to the carriage of local LPTV stations that are displaced. Another approach would be to require that all full service broadcasters in a market agree on some arrangement for the carriage of the programming of displaced LPTV stations during the transition.

We recognize that in addition to the costs incurred to upgrade engineering and technical operations from analog to digital transmission, small stations will also incur costs to promote their new channel identification. Such costs may include: advertising and publicity on-air and additional media; changes to the signage mounted in studio and newsroom sets; channel identification on vehicles, camera/video equipment and accessories; graphic design, typesetting and printing costs for new stationary and paper products; and the production of sales marketing and promotional materials. We seek comment on the type of modifications, production and costs necessary to facilitate a transition to a new channel and the economic impact these expenses will have on small commercial and noncommercial television stations. We seek comment on whether the Commission should adopt measures that will assist small stations (as classified under either the SBA definition or their number of employees) in their transition, either in their cost to upgrade technical operations or new channel identification. If such measures should be taken, please provide recommendations and state with particularity what class of small stations should be the beneficiaries of such proposals.

It is possible that there may be some small stations that will be required to move a second time, and will incur additional costs, within a relatively short period of time, to promote their new DTV channel identification. We seek comments on how to minimize or offset these additional costs to a small station who is also subjected to a second move.

Ordering Clauses

18. In accordance with the proposals and actions described herein, it is ordered, that the Commission will not accept additional applications for new NTSC stations that are filed after 30 days from the date of publication of this Further Notice in the Federal Register. The Commission will continue to process applications for new NTSC stations that are currently on file and any new such applications that are filed

on or before 30 days from the date of publication of this Further Notice in the Federal Register in accordance with procedures and standards indicated herein. In addition, it is ordered that, effective immediately as of the close of business on the date of adoption of this Further Notice, the Commission will not accept any additional Petitions for Rule Making proposing to amend the existing TV Table of Allotments in Section 73.606(b) of its rules to add an allotment for a new NTSC station. It is further ordered that, effective immediately as of the close of business on the date of adoption of this Further Notice, the Commission will condition the grant of any modifications of the technical parameters of existing full service NTSC stations on the outcome of this rule making proceeding.

19. This action is being taken pursuant to authority contained in Sections 4(i), 7, 301, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157, 301, 302, 303 and 307. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR Sections 1.1202, 1.1203, and 1.1206(a).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–21261 Filed 8–20–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 96–D010]

Defense Federal Acquisition Regulation Supplement; Carbon Fiber

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to rescind the restriction on coal and petroleum pitch carbon fiber and move coverage of the restriction on polyacrylonitrile (PAN) carbon fiber to DFARS Subpart 225.71, since the restrictions are no longer statutory.

DATES: Comment date: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 21, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D010 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Section 8048 of the Fiscal Year 1991 Defense Appropriations Act (Pub. L. 101–511) required DoD to acquire at least 50 percent of the DoD annual requirements for PAN carbon fiber from domestic sources by fiscal year 1992. Section 9040A of the Fiscal Year 1993 Defense Appropriations Act (Pub. L. 102–396) required DoD to acquire 75% of the DoD annual requirements for coal and petroleum pitch carbon fiber from domestic sources by fiscal year 1994. As a result of these statutory provisions, DFARS currently requires use of domestic coal and petroleum pitch carbon fiber and PAN carbon fiber in all acquisitions for major systems that are not yet in production. DoD has decided that the restriction on coal and petroleum pitch carbon fiber is no longer needed. However, as a matter of policy, DoD has decided to retain the restriction on PAN carbon fiber for at least several more years, in order to sustain the domestic suppliers and ensure that DoD will have continued access to the industrial and technological capabilities needed to meet its PAN carbon fiber requirements.

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.* Although this rule will open up to potential foreign competition the requirements for coal and petroleum pitch carbon fiber on major systems not yet in production, the only known domestic manufacturer of coal and petroleum pitch carbon fiber is a large business. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 96–D010 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply. This interim rule does not impose any new information collection requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulation Council.

Therefore, 48 CFR Parts 225 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

225.7013 [Removed and reserved]

2. Section 225.7013 is removed and reserved.

225.7013–1 and 225.7013–2 [Removed]

3. Sections 225.7013–1 and 225.7013–2 are removed.

225.7020 [Removed and reserved]

4. Section 225.7020 is removed and reserved.

225.7020–1 and 225.7020–2 [Removed]

5. Sections 225.7020–1 and 225.7020–2 are removed.

6. Sections 225.7106 through 225.7106–3 are added to read as follows:

225.7106 Polyacrylonitrile (PAN) carbon fiber.

225.7106–1 Policy.

All new major systems must use U.S. or Canadian manufacturers or producers for all PAN carbon fiber requirements.

225.7106–2 Waivers.

Contracting officers may, with the approval of the head of the contracting activity, waive, in whole or in part, the requirement of the clause at 252.225–7022. For example, a waiver is justified if a qualified U.S. or Canadian source cannot meet scheduling requirements.

225.7106–3 Contract clause.

Use the clause at 252.225–7022, Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber, in all acquisitions for major systems (as

defined in FAR part 34) that are not yet in production (milestone III as defined in DoDI 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPS) and Major Automated Information System (MAIS) Acquisition Programs).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Section 252.225–7022 is amended by revising the section title, introductory text, clause title and date, and paragraphs (a) and (c) to read as follows:

252.225–7022 Restriction on acquisition of polyacrylonitrile (PAN) carbon fiber.

As prescribed in 225.7106–3, use the following clause:

Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber (Date)

(a) This clause applies only if the end product furnished under this contract contains polyacrylonitrile carbon fibers (alternatively referred to as PAN-based carbon fibers or PAN-based graphite fibers).

* * * * *

(c) The Contracting Officer may waive the requirement in paragraph (b) in whole or in part. The Contractor may request a waiver from the Contracting Officer by identifying the circumstances and including a plan to qualify U.S. or Canadian sources expeditiously.

(End of clause)

252.225–7034 [Removed and Reserved]

6. Section 252.225–7034 is removed and reserved.

[FR Doc. 96–21341 Filed 8–20–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 950810206–6225–05; I.D. 070296D]

RIN 0648–AG29

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 12

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS issues this proposed rule to implement certain provisions of Amendment 12 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). Amendment 12 would reduce the minimum size limit for red snapper harvested in the commercial fishery and eliminate a scheduled, automatic size limit increase for the commercial red snapper fishery in 1998; establish a minimum size limit for banded rudderfish and lesser amberjack taken under the bag limits; establish a bag limit for banded rudderfish, greater amberjack, and lesser amberjack, combined, of one fish; and establish a 20–fish aggregate bag limit for reef fish species for which there are no other bag limits. Based on a preliminary evaluation of Amendment 12, NMFS disapproved the minimum size limit measures for red snapper harvested in the commercial fishery because those measures were determined to be inconsistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act). The proposed rule would implement the remaining measures in Amendment 12. The intended effects of the proposed rule are to provide additional protection for greater amberjack, lesser amberjack, and banded rudderfish, conserve reef fish, and enhance enforceability of the regulations.

DATES: Written comments must be received on or before September 30, 1996.

ADDRESSES: Comments on the proposed rule must be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 12, which includes an environmental assessment and a regulatory impact review (RIR), should be sent to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL, 33609, PHONE 813–228–2815; FAX: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson Act.

Disapproval of the Red Snapper Minimum Size Limit Changes

Amendment 5 to the FMP established a schedule of increases in the red snapper minimum size limit for the commercial and recreational sectors. The schedule included an increase from 14 inches (35.6 cm) to 15 inches (38.1 cm), effective January 1, 1996, and from 15 inches (38.1 cm) to 16 inches (40.6 cm), scheduled to become effective January 1, 1998. Under Amendment 12 and a regulatory amendment under the FMP framework procedure for adjusting management measures, the Council proposed to reduce the minimum size limit for red snapper harvested in the commercial fishery from 15 inches (38.1 cm) to 14 inches (35.6 cm) and to eliminate the automatic increase to 16 inches (40.6 cm) scheduled for January 1, 1998.

Based on a preliminary evaluation of the regulatory amendment and Amendment 12, NMFS concluded that the proposed size limit measures for red snapper were inconsistent with national standard 1 of the Magnuson Act. Accordingly, NMFS disapproved these size limit measures and has not included them in this proposed rule. Additional discussion regarding disapproval of those measures was included in the proposed rule (61 FR 42413, August 15, 1996) for the regulatory amendment and is not repeated here.

Bag and Size Limits for Amberjack and Related Species

Greater amberjack, lesser amberjack, and banded rudderfish are very similar morphologically, particularly at smaller sizes. Taxonomic guides are available to differentiate these species, but require detailed comparisons of gill rakers and other fish body parts. Consequently, it is difficult for many fishermen to distinguish among these three species. Confusion regarding species identification has complicated compliance, as well as enforcement and prosecution of applicable size and bag limits.

Currently, for recreational fishermen, a three-fish bag limit and a 28–inch (71.1–cm) fork length minimum size limit apply to greater amberjack, but not to the morphologically similar lesser amberjack and banded rudderfish. As a result, some persons who misidentify undersized greater amberjack as lesser amberjack or banded rudderfish mistakenly land those fish in violation of the current size and/or bag limits. There is also concern that some fishermen are deliberately landing undersized greater amberjack under the guise that they are lesser amberjack or banded rudderfish. Because enforcement is sometimes confounded by the species identification problem, compliance with the size and bag limits is being circumvented.

The Council and its Law Enforcement Advisory Panel believe that uniform

recreational limits for greater amberjack, lesser amberjack, and banded rudderfish are needed to resolve the compliance and enforcement problems associated with the species identification problem. Therefore, for recreational fishermen (i.e., persons subject to the bag limit), this proposed rule would establish a 28–inch (71.1–cm) fork length minimum size for lesser amberjack and banded rudderfish, the same as the existing size limit for greater amberjack. The proposed uniform size limit will severely restrict recreational harvest of lesser amberjack and banded rudderfish because these species rarely attain 28–inch (71.1–cm) fork length. However, the Council determined that the conservation benefits resulting from improved compliance and effective enforcement of a 28–inch (71.1–cm) size limit would outweigh any adverse effects associated with reduced recreational harvest of lesser amberjack and banded rudderfish.

The Council's Reef Fish Advisory Panel recommended a reduction in the current three-fish recreational bag limit for greater amberjack to address their conclusion that the greater amberjack resource has declined in abundance. A majority of persons testifying at the public hearings also supported a reduced bag limit. Based on this information, and in recognition of the need for uniform limits for the three related species, the Council is proposing a one-fish bag limit for greater amberjack, lesser amberjack, and banded rudderfish, combined.

Aggregate Reef Fish Bag Limit

Currently, reef fish species not subject to bag limits may be possessed in unlimited quantities. This could provide an incentive for recreational fishermen to harvest large quantities of these species and sell their catch. The Council concluded that conservation of the reef fish resource would be better achieved by limiting recreational catches of reef fish species that currently do not have a bag limit. A 20–fish aggregate bag limit will prevent an uncontrolled increase in harvest of these reef fish species. The Council considered the 20–fish bag limit to be a reasonable limit that would have relatively minor impacts on the majority of anglers.

Availability of Amendment 12

Additional background and rationale for the measures discussed above are contained in Amendment 12, the availability of which was filed with the Office of the Federal Register on August 13, 1996 (to be announced in the *Federal Register* on August 19, 1996). Agency review of Amendment 12 began on July 2, 1996.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council. NMFS has disapproved the size limit provisions, as discussed above, and has not determined at this time that the remaining provisions of Amendment 12 are consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

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 issued under authority of section 304(a) of the Magnuson Fishery Conservation and Management Act will not have a significant economic impact on a substantial number of small entities.

As submitted by the Gulf of Mexico Fishery Management Council, Amendment 12 to the FMP and its implementing proposed rule would: Reduce the minimum size limit for red snapper harvested in the commercial fishery from 15 inches to 14 inches and eliminate the scheduled, automatic adjustment to 16 inches in 1998; establish a minimum size limit of 28 inches fork length for banded rudderfish and lesser amberjack taken under the bag limits; establish a bag limit for banded rudderfish, greater amberjack, and lesser amberjack, combined, of one fish; and establish a 20–fish aggregate bag limit for reef fish species for which there are no other bag limits.

Based on a preliminary evaluation of Amendment 12, the National Marine Fisheries Service (NMFS) disapproved the proposed size limit measures for red snapper after finding them inconsistent with the Magnuson Fishery Conservation and Management Act's national standard 1. The disapproved measures are not included in the proposed rule.

The Council's regulatory impact review (RIR) indicated that the proposed red snapper size limit measures may have significant, positive economic impacts on all of the 1,532 active permitted reef fish vessels. However, these size limit measures were disapproved by NMFS.

Based on the Council's RIR, NMFS has determined that the proposed commercial minimum size and bag limit measures affecting the harvest of greater and lesser amberjack and banded rudderfish would: (1) Decrease gross revenues less than 5 percent in the affected for-hire sector, which is comprised of 838 charter vessels and 92 headboats; (2) impose additional compliance costs on the for-hire vessels that are not likely to exceed 5 percent of current operation costs; (3) not result in issues of big versus small business operations with associated distributional/regional economic effects or disproportionate effects on capital costs of compliance because all participants in the commercial reef fish fishery and the for-hire sector may be considered small business entities; and (4) would not force small business entities to cease operations. Based on these findings, an initial regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 15, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.37, paragraph (d)(5) is revised to read as follows:

§ 622.37 Minimum sizes.

* * * * *

(d) * * *

(5) Jacks—(i) For banded rudderfish, greater amberjack, and lesser amberjack taken by a person subject to the bag limit specified in § 622.39(b)(1)(i)—28 inches (71.1 cm) fork length.

(ii) For greater amberjack taken by a person not subject to the bag limit specified in § 622.39(b)(1)(i)—36 inches (91.4 cm) fork length.

(iii) For banded rudderfish and lesser amberjack taken by a

person not subject to the bag limit specified in § 622.39(b)(1)(i)—no minimum size limit.

* * * * *

3. In § 622.39, paragraph (b)(1)(i) is revised, and paragraph (b)(1)(v) is added to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(i) Banded rudderfish, greater amberjack, and lesser amberjack, combined—1.

* * * * *

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (iv) of this section—20.

* * * * *

[FR Doc. 96–21260 Filed 8–16–96; 2:14 pm]

BILLING CODE 3510–22–F

50 CFR Part 648

[Docket No. 960805216–6216–01; I.D. 071596E]

RIN 0648–AH06

Fisheries of the Northeastern United States; Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement those provisions of Amendment 9 to the Fishery Management Plan (FMP) for the Summer Flounder, Scup and Black Sea Bass Fisheries not initially disapproved. Amendment 9 would implement management measures for the black sea bass fishery in order to reduce fishing mortality and allow the stock to rebuild.

DATES: Public comments must be received on or before October 7, 1996.

ADDRESSES: Comments on the proposed rule or supporting documents should be sent to Dr. Andrew A. Rosenberg, Regional Director, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Black Sea Bass Fishery.''

Comments regarding burden-hour estimates for collection-of-information requirements contained in this proposed rule should be sent to the Director, Northeast Region, NMFS, at the address above and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20502 (Attention: NOAA Desk Officer).

Copies of Amendment 9, the final environmental impact statement (FEIS), the Mid-Atlantic Fishery Management Council's initial regulatory flexibility analysis, the regulatory impact review, and other supporting documents are available upon request from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508–281–9221.

SUPPLEMENTARY INFORMATION:

Background

In 1978, the Mid-Atlantic Fishery Management Council (Council) began the development of an FMP for black sea bass pursuant to the Magnuson Fishery Management and Conservation Act, as amended (Magnuson Act). Although preliminary development work was done, the FMP was not completed. In January 1990, the Council and the Atlantic States Marine Fisheries Commission (Commission) began to develop an FMP for black sea bass as an amendment to the summer flounder FMP. However, its development was delayed by a series of amendments to address problems in the summer flounder fishery. Work on a separate black sea bass FMP was not resumed until 1993.

NMFS requested that the black sea bass regulations be incorporated into the summer flounder FMP, as an amendment, because black sea bass are usually harvested with summer flounder and scup and it is logical to manage these fisheries under one FMP. Furthermore, this combination will reduce the number of separate regulations issued by the Federal government. As a result, the measures were submitted as Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass FMP. Amendment 9 was prepared jointly by the Council and Commission, in consultation with the New England and South Atlantic Fishery Management Councils, and adopted for NMFS review at the Council meeting in May 1996. Subsequently, as part of the President's Regulatory Reinvention Initiative, regulations implementing all fishery management plans for the marine fisheries of the Northeast region were consolidated into one new CFR part. This proposed rule would establish black sea bass measures at 50 CFR 648, subparts A and I.

A notice of availability for Amendment 9 was published in the Federal Register on July 24, 1996 (61 FR 38430). The amendment revises the summer flounder (*Paralichthys dentatus*) and scup (*Stenotomus chrysops*) FMP to include management measures for the black sea bass (*Centropristis striata*) fishery. The management unit for this fishery is black sea bass in U.S. waters of the western Atlantic Ocean from 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canadian border.

Status of the Stocks

Commercial landings of black sea bass have declined dramatically from the peak landings of 22 million lb (9.98 mil kg) reported in the 1950's. In 1994, commercial landings were about 2.0 million lb (0.91 mil kg), or about 60 percent of the 1983–1994 average of 3.4 million lb (1.54 mil kg). Additionally, recreational landings were 2.9 million lb (1.32 mil kg) in 1994, lower than the 1983–94 average of 3.8 million lb (1.72 mil kg).

Landings-per-unit-effort (LPUE) from the Mid-Atlantic trawl fishery has been used as an index of abundance for black sea bass. Standardized LPUE, defined as metric tons (mt) per days fished for trips landing more than 25 percent black sea bass, peaked at 11.3 mt in 1984, and then declined to a low of 1.6 mt in 1992. Standardized LPUE increased slightly to 3.2 mt in 1993.

The Northeast Fisheries Science Center (NEFSC) has conducted a spring and autumn offshore survey for a number of species, including black sea bass, since 1972. The spring offshore survey has been used as an index for black sea bass recruits (fish longer than 20 cm standard length (SL)) and the autumn inshore survey data as an index of pre-recruits (fish less than 11 cm SL). The spring recruit index was generally high in the late 1970's, ranging from 2.0 to 6.09 fish per tow. The spring index declined from 6.09 fish per tow in 1977 to a low of 0.2 per tow in 1982. More recently the spring index was 0.87 in 1993 and declined to 0.28 in 1994. The fall pre-recruit indices show a similar trend (i.e., relatively low recent values compared to the mid-1970's).

Analyses conducted by the NEFSC indicate a strong correlation between the fall pre-recruit index and commercial catch per unit effort in the trawl fishery. The index for pre-recruits indicated that above-average year classes were produced in 1977, 1982, and 1986. Recruitment for 1992 and 1993, based on this index, was well below average. Recruitment was above average in 1994. Despite this above average recruitment in 1994, available information still indicate that black sea bass are overexploited.

Overfishing for black sea bass is defined in Amendment 9 as fishing in excess of F_{max}. F_{max} is the biological reference point corresponding to an exploitation rate of 23 percent (i.e., the proportion of the population removed during a time period), and the level of fishing mortality (F) that produces maximum yield per recruit. Based on current conditions in the fishery, F_{max} for black sea bass is 0.29. The results of a virtual population analysis—an analysis of catches from a given year class over its life in the fishery—indicate that the fishing mortality rate in

1993 was 1.05 (an annual exploitation rate of 60 percent). This rate, coupled with the above information—that is, the decline in landings, reduced LPUE, and low survey indices—indicate that black sea bass are overexploited.

Disapproved Measures

NMFS, on behalf of the Secretary of Commerce, disapproved the commercial quota mechanism proposed in Amendment 9 based upon a preliminary evaluation of Amendment 9, as authorized under section 304(a)(1)(A)(ii) of the Magnuson Act. Thus, this provision is not included in this proposed rule. This provision would have specified an annual commercial quota apportioned among the states from North Carolina, northward from Cape Hatteras, through Maine, unless some other alternative was developed to take its place. This provision was determined to be inconsistent with national standard 7 of the Magnuson Act because it is not a viable management measure. Amendment 9 failed to address adequately how a commercial quota that bifurcates the State of North Carolina at Cape Hatteras would be implemented, given the fact that the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region imposes management measures to the south for an actively fished stock of black sea bass. The quota monitoring system proposed by the Council would impose significant administrative and enforcement costs on NMFS and/or the State of North Carolina. The cost of law enforcement would significantly outweigh any benefits to the stock, especially in the initial years of quota management, given the amendment's protracted rebuilding schedule.

NMFS believes that the commercial quota is one of the primary mechanisms to reduce overfishing in this fishery, and without it there is no mechanism to attain the reductions in exploitation necessary to achieve the amendment's goals. Amendment 9 must represent a complete management program to satisfy the national standards and other applicable law. Final approval of the remaining measures of Amendment 9, therefore, will be contingent upon the resubmission of a commercial quota measure that rehabilitates the deficiencies of the disapproved measure. In order for NMFS to determine that Amendment 9 is a complete, approvable management program for black sea bass, a resubmission that revises the quota measure must be received by NMFS in sufficient time for NMFS to conduct its review of the measure, including the consideration of public comments received during the public comment period, by the Day 95 statutory decision deadline for Amendment 9 (October 17, 1996).

Proposed Measures

Vessel, Dealer, and Operator Permits

The Council proposes to establish a moratorium on commercial vessel permits for the directed fishery for black sea bass. Any owner or operator of a vessel desiring to fish for black sea bass within the exclusive economic zone (EEZ) for sale, or transport, or delivery for sale, would have to obtain a permit from NMFS for that purpose. Vessel owners would be required to demonstrate past participation in the fishery to obtain a commercial moratorium permit. The Council proposes to limit moratorium permits to vessels with documented landings of black sea bass for sale between January 26, 1988, and January 26, 1993. Vessels that were under construction for, or being rerigged for, use in the directed fishery for black sea bass on January 26, 1993, would be eligible for a moratorium permit provided they landed black sea bass for sale prior to January 26, 1994.

The owner or operator of a party or charter boat (vessel for hire) desiring to fish for black sea bass within the EEZ would have to obtain a charter/party boat permit from NMFS for that purpose. A party or charter boat could have both a charter/party boat permit and a commercial moratorium permit if, in addition to meeting the charter/party boat criteria, the vessel meets the commercial vessel qualification requirements set forth in Amendment 9. However, such a vessel would have to fish under any existing recreational rules if it were carrying passengers for a fee. A vessel may replace a vessel, with substantially similar harvesting capacity that initially qualified for a moratorium permit, but both vessels must be owned by the same person. Vessel permits issued to vessels that leave the fishery may not be combined to create larger replacement vessels.

An operator of a vessel with any permit issued under Amendment 9 would be required to have a Federal operator permit. The operator permits issued to operators in the Northeast multispecies, American lobster, Atlantic sea scallops and/or Atlantic mackerel, squid, and butterfish fisheries would satisfy this requirement. The operator would be held accountable for violations of the fishing regulations and could be subject to a permit sanction. During the permit sanction period, the operator could not work in any capacity aboard a federally permitted fishing vessel.

Under Amendment 9, any dealer of black sea bass would be required to have a NMFS dealer permit. A dealer of black sea bass would be defined as a person or firm that receives black sea bass for a commercial purpose from the owner or operator of a vessel issued a moratorium permit pursuant to Amendment 9, other than solely for transport on land.

Reporting and Recordkeeping

The Council intends to institute recordkeeping and reporting requirements for black sea bass that are identical to those required by the Atlantic Mackerel, Squid, and Butterfish, the Summer Flounder, the Northeast Multispecies, and the Atlantic Sea Scallop Fishery Management Plans. The logbooks in use for those fisheries would be used to meet this requirement. These vessels currently must report all species caught and dealers must report all species purchased. Thus, vessels or dealers reporting under those FMPs would not be subject to any additional reporting burdens as a result of the black sea bass requirements.

Commercial logbooks would be submitted on a monthly basis by Federal moratorium and charter/party boat permit holders in order to monitor the fishery.

Dealers with permits issued pursuant to Amendment 9 would submit weekly reports showing all species purchased in pounds, and the name and permit number of the vessels from which the species were purchased. Buyers that do not purchase directly from vessels would not be required to submit reports under this provision.

Minimum Fish Sizes

Amendment 9 would establish minimum fish sizes that could be adjusted annually by the Black Sea Bass Monitoring Committee (Monitoring Committee). The initial minimum fish size would be 9 inches (22.9 cm) total length for both the commercial and recreational fisheries.

Minimum Mesh Size

The minimum mesh-size requirement for otter trawl vessels possessing a threshold catch of 100 lb or more (45.4 kg or more) of black sea bass would be a minimum codend mesh size of 4.0 inches (10.2 cm) diamond mesh or 3.5 inches (8.9 cm) square mesh, inside measure, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net or, if the net is not long enough for such a

measurement, the terminal one-third of the net, measured from the terminus of the codend to the center of the head rope. The minimum net mesh size and the threshold level could be adjusted annually by the Monitoring Committee.

Maximum Roller Size

Amendment 9 would prohibit owners or operators of vessels issued moratorium permits from using roller rig trawl gear equipped with rollers greater than 18 inches (45.7 cm) in diameter.

Pot and Trap Gear Requirements

Black sea bass pots and traps would be required to have a minimum escape vent of 1 - 1/8 inches x 5 3/4 inches (2.86 cm x 14.61 cm), 2.0 inches (5.1 cm) in diameter, or 1.5 inches (3.81 cm) square (inside measure). Compliance with the escape vent provision would be required at the start of the first calendar year following approval of Amendment 9, so that harvesters would not be required to pull their pots and add vents in the middle of the season. Black sea bass pots and traps would be required to have hinges and fasteners on one panel or door made of degradable materials. The opening in the pot or trap covered by the panel affixed to the trap with degradable fasteners would have to be at least 3 inches x 6 inches (7.62 cm x 15.24 cm).

The escape vent requirement could be adjusted annually by the Monitoring Committee.

Harvest Limit

In 1998, a coastwide harvest limit would be specified at a level that would reduce the exploitation rate to the level specified in the rebuilding schedule. This harvest limit would be allocated 49 percent to the commercial fishery, and 51 percent to the recreational fishery, via a recreational harvest limit. The coastwide harvest limit will be set annually by the Monitoring Committee.

Recreational Measures

Beginning in 1997, recreational landings would be compared to annual target harvest levels to determine if modifications to the recreational season, possession limit, and minimum size limit are required in the following year in order for the fishery to remain within specified harvest limits.

Special Management Zones

An individual issued a permit by the Corps of Engineers for an artificial reef (permittee) may make a request to the Council that the artificial reef, and appropriate surrounding area of the artificial reef, fish attraction device, or other modification of habitat for the purpose of fishing, be designated as a special management zone (SMZ). The SMZ would prohibit or restrain the use of specific types of fishing gear that are not compatible with the intent of the permittee for the artificial reef or habitat modification. The establishment of an SMZ would be done by regulatory amendment involving full public participation.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires NMFS to publish regulations proposed by a Council within 15 days of receipt of the amendment and proposed regulations. At this time, NMFS has not determined whether the measures in Amendment 9 that these rules would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. NMFS, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared an FEIS for Amendment 9, a copy of which may be obtained from the Council (see **ADDRESSES**).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration, that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Amendment 9 would implement management measures for the black sea bass fishery where none had previously existed. The economic analysis contained in Amendment 9 indicates that it is unlikely that the measures that would be implemented by this action would increase or decrease ex-vessel revenues by more than 5 percent for more than 20 percent of the small entities engaged in the black sea bass fishery. Based on the available information, many fishery participants are already in compliance with the measures proposed to be implemented (including a maximum diameter for roller gear and minimum mesh size requirements for the otter trawl fishery, and fish size requirements). Black sea bass fishery participants generally land scup, summer flounder, squid, dogfish, and other species with black sea bass. Sixty percent of the trips landing black sea bass are otter trawl trips. Based on 1992 data for otter trawl trips landing over 100 pounds of black sea bass, *Loligo*, scup, and summer flounder comprise approximately 34, 12 and 11 percent by weight, respectively, of the total catch, whereas black sea bass comprises approximately only 2.5 percent. This 2.5 percent by weight comprises only 3.6 percent of the value of the total catch. For the years 1983 to 1992 combined, nearly 60 percent of the trips landing black sea bass used otter trawl gear.

Minimum fish size regulations (see above) for black sea bass contained in this amendment may reduce total pounds landed in 8 of the 13 states that do not currently have minimum fish size requirements for this species, because fishermen may no longer land fish smaller than the minimum size. However, based on the available data, the amount of reduction of landings is not expected to be significant. For example, even if size restrictions were to reduce coastwide otter trawl landings by 10 percent (a worse case assumption from the point of adverse economic impact), impact on otter trawl vessels would be marginal because of the low proportion of black sea bass in the total catch, as noted above. It is anticipated that the minimum fish size would have similarly insignificant impacts on the remaining gear types, which comprise the remaining 40 percent of all black sea bass landings. Therefore, this rule most likely would not have a significant impact on a substantial number of small entities.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The proposed rule contains new requirements that have been submitted to OMB for approval. These requirements and their estimated response times are: Mandatory dealer reporting at 2 minutes per response, annual employment data at 6 minutes per response, vessel reporting requirements at 5 minutes per response, vessel permits and permit appeals at 30 minutes per response, operator permits at 1 hour per response, observer notification requirement at 2 minutes per response, vessel marking (3 locations) at 15 minutes per marking, gear identification requirements at 1 minute per response, and requests for an experimental fishing exemption at 1.9 hours.

The response estimates shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding any of these burden estimates or any other aspect of the collection of information to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to

respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 14, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.1, paragraph (a) is revised to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMP) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Atlantic Sea Scallop FMP (Scallop FMP)); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the Northeast multispecies fishery (NE Multispecies FMP); and the summer flounder, scup and the black sea bass fisheries (Summer Flounder, Scup and Black Sea Bass FMP). These FMPs and the regulations in this part govern the conservation and management of fisheries of the northeastern United States.

* * * * *

3. In § 648.2, the definitions for ''Black Sea Bass Monitoring Committee,'' ''Black sea bass pot or black sea bass trap,'' are added, in alphabetical order, and the definition for ''Council'' is revised to read as follows:

* * * * *

Black Sea Bass Monitoring Committee means a committee made up of staff representatives of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, the Northeast Regional Office of NMFS, the Northeast Fisheries Science Center, and Commission representatives. The Council Executive Director or his designee chairs the Committee.

Black sea bass pot or black sea bass trap means any such gear used to catch and retain black sea bass.

* * * * *

Council means the New England Fishery Management Council (NEFMC) for the Atlantic sea scallop and the NE multispecies fisheries, or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; the Atlantic surf clam and ocean quahog; and the summer flounder, scup and black sea bass fisheries.

* * * * *

4. In § 648.4, paragraph (a)(6) is added and reserved, paragraph (a)(7) is added, and paragraph (b) is revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(7) *Black sea bass vessels.* Beginning 90 days following the effective date of these regulations, any vessel of the United States that fishes for or retains black sea bass in or from the EEZ north of 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, must have been issued and carry on board a valid black sea bass moratorium permit, except for vessels other than party or charter vessels that observe the possession limit established pursuant to § 648.145.

(i) *Moratorium permits*—(A) *Eligibility.* A vessel is eligible to receive a permit to fish for and retain black sea bass in excess of the possession limit established pursuant to § 648.145 in the EEZ north of 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, if it meets any of the following criteria:

(*1*) The vessel landed and sold black sea bass between January 26, 1988, and January 26, 1993; or

(*2*) The vessel was under construction for, or was being rerigged for, use in the directed fishery for black sea bass on January 26, 1993, provided the vessel landed black sea bass for sale prior to January 26, 1994.

(*3*) The vessel is replacing a vessel of substantially similar harvesting capacity that qualifies under the criteria of paragraph (a)(7)(i)(A)(*1*) or (a)(7)(i)(A)(*2*) of this section, and both the entering and replaced vessels are owned by the same person. Vessel permits issued to vessels that leave the fishery may not be combined to create larger replacement vessels.

(B) *Application/renewal restrictions.* No one may apply for an initial black sea bass moratorium permit after:

(*1*) [Insert date 12 months after the effective date of the final rule]; or

(*2*) The owner retires the vessel from the fishery.

(C) *Qualification restriction.* Unless the Regional Director determines to the contrary, no more than one vessel may qualify at any one time for a black sea bass moratorium permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a black sea bass moratorium permit based on one vessel's fishing and permit history, the Regional Director will determine who is entitled to qualify for the permit according to paragraph (D) of this section.

(D) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel. If the fishing and permit history of the vessel is transferred, the transferee/buyer must comply with the requirements of § 648.4(h) for the continuation of a moratorium permit for his or her benefit.

(E) *Replacement vessels.* To be eligible for a moratorium permit under this section, the replacement vessel must be of substantially similar harvesting capacity as the vessel that initially qualified for the moratorium permit, and both vessels must be owned by the same person. Vessel permits issued to vessels that leave the fishery may not be combined to create larger replacement vessels.

(F) *Appeal of denial of permit.* (*1*) Any applicant denied a moratorium permit may appeal to the Regional Director within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Director erred in concluding that the vessel did not meet the criteria in paragraph (a)(7)(i)(A)(*1*) or (a)(7)(i)(A)(*2*) of this section. The appeal shall set forth the basis for the applicant's belief that the Regional Director's decision was made in error.

(*2*) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Director.

(*3*) The hearing officer shall make a recommendation to the Regional Director.

(*4*) The decision on the appeal by the Regional Director is the final decision of the Department of Commerce.

(ii) *Party and charter boat permit.* The owner of any party or charter boat must obtain a permit to fish for or retain black sea bass in or from the EEZ while carrying passengers for hire.

(b) *Permit conditions.* Vessel owners who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel and vessel's fishing activity, catch, and pertinent gear (without regard to

whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and pertinent gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium or black sea bass permit must also agree, as a condition of the permit, not to land summer flounder or black sea bass in any state, or part thereof, that the Regional Director has determined no longer has commercial quota available. A state, or part thereof, not receiving an allocation of summer flounder or black sea bass is deemed to have no commercial quota available. Owners or operators fishing for surf clams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surf clam and ocean quahog requirement of this part differs from a surf clam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owner or operator permitted to fish in the EEZ for surf clams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surf clam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Director allows an individual to comply with the less restrictive state minimum size requirement, so long as fishing is conducted exclusively within state waters.

* * * * *

5. In § 648.5, paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE multispecies, Atlantic mackerel, squid, and butterfish, and; as of 90 days following the effective date of the regulations, black sea bass; harvested in or from the EEZ, or issued a permit for these species under this part, must have and carry on board a valid operator's permit issued under this section. An operator permit issued pursuant to part 649 shall satisfy the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

* * * * *

6. In § 648.6, paragraph (a) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, sea scallop, summer flounder, surf clam and ocean quahog dealers, and surf clam and ocean quahog processors must have been issued and have in their possession a permit for such species issued under this section. As of January 1, 1997, all Atlantic mackerel, squid, and butterfish dealers, and, as of [insert date 90 days after the effective date of the final rule], all black sea bass dealers must have been issued and have in their possession a valid dealers permit for those species.

* * * * *

7. In § 648.7, paragraphs (a)(1)(i), (a)(2)(i), (b)(1)(i), (b)(1)(iii) the first sentence, and (f)(3) are revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) * * *

(i) Summer flounder, scallop, NE multispecies, Atlantic mackerel, squid and butterfish, and, as of [insert date 90 days after the effective date of the final rule], black sea bass dealers, must provide: Name and mailing address of dealer, dealer number, name and permit number of the vessels from which fish are landed or received, dates of purchases, pounds by species, price by species, and port landed. If no fish are purchased during the week, a report so stating must be submitted. All report forms must be signed by the dealer or other authorized individual.

* * * * *

(2) * * *

(i) Summer flounder, scallop, NE multispecies, Atlantic mackerel, squid, and butterfish, and, as of [insert date 90 days after the effective date of the final rule], black sea bass dealers must complete the ''Employment Data'' section of the Annual Processed Products Reports; completion of the other sections of that form is voluntary. Reports must be submitted to the address supplied by the Regional Director.

* * * * *

(b) *Vessel owners*—(1) *Fishing Vessel Log Reports*—(i) *Owners of vessels issued summer flounder moratorium, scallop, multispecies, mackerel, squid, and butterfish, or black sea bass moratorium permits.* The owner or operator of any vessel issued a vessel permit for summer flounder moratorium, scallops, NE multispecies, or, as of January 1, 1997, an Atlantic mackerel, squid, or butterfish vessel permit, or, as of [insert date 90 days after the effective date of the final rule], a black sea bass moratorium permit, must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. * * *

* * * * *

(iii) *Owners of party and charter boats.* The owner of any party or charter boat issued a summer flounder permit other than a moratorium permit and carrying passengers for hire shall maintain on board the vessel, and submit, an accurate daily fishing log report for each charter or party fishing trip that lands summer flounder, unless such a vessel is also issued a summer flounder moratorium permit, a sea scallop permit, a multispecies permit, or, as of January 1, 1997, a mackerel, squid or butterfish permit, or, as of [insert date 90 days after the effective date of the final rule], a black sea bass permit, in which case a fishing log report is required for each trip regardless of species retained. * * *

* * * * *

(f) * * *

(3) *At-sea purchasers, receivers, or processors.* All persons purchasing, receiving, or processing any summer flounder, Atlantic mackerel, squid, butterfish or, as of [insert date 90 days after effective date of the final rule], black sea bass at sea for landing at any port of the United States must submit information identical to that required by paragraph (a)(1) or (a)(2) of this section, as applicable, and provide those reports to the Regional Director or designee on the same frequency basis.

8. In § 648.11, paragraphs (a) and (e) introductory text are revised to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

(a) The Regional Director may request any vessel holding a permit for the Atlantic mackerel, squid, and butterfish; sea scallop; NE multispecies; summer flounder, or, as of [insert date 90 days after the effective date of the final rule], black sea bass fisheries to carry a NMFS-approved sea sampler/observer. If requested by the Regional Director to carry an observer or sea sampler, a vessel may not engage in any fishing operations in the respective fishery unless an observer or sea sampler is

aboard, or unless the requirement is waived.

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit or, as of [insert date 90 days after the effective date of the final rule], a black sea bass moratorium permit, if requested by the sea sampler/observer also must:

* * * * *

9. Section 648.12 is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Director may exempt any person or vessel from the requirements of subparts B (Atlantic mackerel, squid, and butterfish), D (sea scallop), E (surf clam and ocean quahog), F (NE multispecies), G (summer flounder), or I (black sea bass), of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Director shall consult with the Executive Director of the Council regarding such exemptions for the Atlantic mackerel, squid, and butterfish, the summer flounder and the black sea bass fisheries.

10. In § 648.14, paragraph (a)(8) is revised, paragraphs (a)(80), (a)(81), and (a)(82) are added, paragraph (t) is redesignated as paragraph (v), and new paragraph (t), and paragraphs (u) and (v)(6) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(8) Assault, resist, oppose, impede, harass, intimidate, interfere with or bar by command, impediment, threat, or coercion either a NMFS-approved observer, sea sampler, or other NMFS-authorized employee aboard a vessel or in a dealer/processor establishment, conducting his or her duties aboard a vessel or in a dealer/processor establishment, or an authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part.

* * * * *

(80) Possess in or harvest from the EEZ black sea bass either in excess of the possession limit established pursuant to § 648.145 or before or after the time period established pursuant to § 648.142, unless the person is operating a vessel issued a moratorium permit under § 648.4 and the moratorium permit is on board the vessel and has not been surrendered, revoked, or suspended.

(81) Possess nets or netting with mesh not meeting the minimum mesh requirement of § 648.144 if the person possesses black sea bass harvested in or from the EEZ in excess of the threshold limit established pursuant to § 648.144(a).

(82) Purchase or otherwise receive for commercial purposes black sea bass caught by other than a vessel with a moratorium permit not subject to the possession limit established pursuant to § 648.145 unless the vessel has not been issued a permit under this part and is fishing exclusively within the waters under the jurisdiction of any state.

* * * * *

(t) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a black sea bass permit (including a moratorium permit) to do any of the following:

(1) Possess 100 lb (45.4 kg) or more of black sea bass, unless the vessel meets the minimum mesh requirement specified in § 648.144(a).

(2) Possess black sea bass in other than a box specified in § 648.145(c) if fishing with nets having mesh that does not meet the minimum mesh-size requirement specified in § 648.144(a).

(3) Land black sea bass for sale in any state, or part thereof, in which commercial quota is no longer available.

(4) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if subject to the minimum mesh requirement specified in § 648.144, unless the nets or netting are stowed in accordance with § 648.23(b).

(5) Fish with or possess rollers used in roller rig or rock hopper trawl gear that do not meet the requirements specified in § 648.144(a)(5).

(6) Fish with or possess pots or traps that do not meet the requirements specified in § 648.144(b).

(7) Sell or transfer to another person for a commercial purpose, other than transport, any black sea bass, unless the transferee has a valid black sea bass dealer permit.

(8) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to a black sea bass moratorium permit.

(u) It is unlawful for the owner and operator of a party or charter boat issued a black sea bass permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(1) Possess black sea bass in excess of the possession limit established pursuant to § 648.145.

(2) Fish for black sea bass other than during a season specified pursuant to § 648.142.

(3) Sell black sea bass or transfer black sea bass to another person for a commercial purpose.

(v) * * *

(6) *Black sea bass.* All black sea bass possessed on board a party or charter boat issued a permit under § 648.4(6)(ii) are deemed to have been harvested from the EEZ.

11. Subpart I is added to read as follows:

Subpart I—Management Measures for the Black Sea Bass Fishery

Sec.	
648.140	Catch quotas and other restrictions.
648.141	Closure.
648.142	Time restrictions.
648.143	Minimum sizes.
648.144	Gear restrictions.
648.145	Possession limit.
648.146	Special management zones.

Subpart I—Management Measures for the Black Sea Bass Fishery

§ 648.140 Catch quotas and other restrictions.

(a) *Annual review.* The Black Sea Bass Monitoring Committee will review the following data, subject to availability, on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to result in a target exploitation rate of 48 percent for black sea bass in 1998, 1999 and 2000; a target exploitation rate of 37 percent in 2001 and 2002; and a target exploitation rate of 29 percent (based on F_{max}) in 2003 and subsequent years: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data, or if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls, pots and traps on the mortality of black sea bass; and any other relevant information.

(b) *Recommended measures.* Based on this review, the Black Sea Bass Monitoring Committee will recommend to the Demersal Species Committee of the Council and the Commission the following measures to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded:

(1) Commercial minimum fish size.

(2) Minimum mesh size in the codend or throughout the net and the catch threshold that would require compliance with the minimum mesh requirement.

(3) Escape vent size.

(4) A recreational possession limit set from a range of (0) to the maximum allowed to achieve the target exploitation rate specified in paragraph (a) of this section. Implementation of this measure will begin in 1998.

(5) Recreational minimum fish size.

(6) Implementation of this measure will begin in 1998.

(7) Restrictions on gear other than otter trawls and pots or traps.

(c) *Annual fishing measures*. The Demersal Species Committee shall review the recommendations of the Black Sea Bass Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the Council with respect to the measures necessary to assure that the target exploitation rate specified in paragraph (a) of this section are not exceeded. The Council shall review these recommendations and, based on the recommendations and public comment, make recommendations to the Regional Director with respect to the measures necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action. The Regional Director will review these recommendations and any recommendations of the Commission. After such review, the Regional Director will publish a proposed rule in the Federal Register October 15 to implement a harvest limit, and additional management measures for the commercial fishery, and will publish a proposed rule in the Federal Register by February 15 to implement additional management measures for the recreational fishery, if he/she determines that such measures are necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded. After considering public comment, the Regional Director will publish a final rule in the *Federal Register* to implement the measures necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded.

§ 648.141 Closure.

EEZ closure. The Regional Director shall close the EEZ to fishing for black sea bass by commercial vessels for the remainder of the calendar year by publishing notification in the Federal Register if he or she determines that the inaction of one or more states will cause the applicable target exploitation rate specified in § 648.140(a) to be exceeded. The Regional Director may reopen the EEZ if earlier inaction by a state has been remedied by that state without causing the applicable specified target exploitation rate to be exceeded.

§ 648.142 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7) and fishermen subject to the possession limit may fish for black sea bass from January 1 through December 31. Beginning in 1998, this time period may be adjusted pursuant to the procedures in § 648.140.

§ 648.143 Minimum sizes.

(a) The minimum size for black sea bass is 9 inches (22.9 cm) total length for all vessels issued a permit under § 648.4(a)(7) and for all other vessels which fish for or retain black sea bass in or from the EEZ. The minimum size may be adjusted for commercial and/or recreational vessels pursuant to the procedures in § 648.140.

(b) The minimum size in this section applies to the whole fish or any part of a fish found in possession (e.g., fillets), except that party or charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if skin remains on the fillet and all other state requirements are met.

§ 648.144 Gear restrictions.

(a) *Trawl gear restrictions*—(1) *General*. (i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 100 lb or more (45.4 kg or more) of black sea bass per trip, must fish with nets that have a minimum mesh size of 4.0 inches (10.2 cm) diamond or 3.5 inches (8.9 cm) square (inside measure) mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the center of the head rope, excluding any turtle excluder device extension.

(ii) Mesh sizes shall be measured pursuant to the procedure specified in § 648.104(a)(2).

(2) *Net modifications*. No vessel subject to this part shall use any device, gear, or material, including, but not limited to nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.6 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net.

(3) *Mesh obstruction or constriction*. (i) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(2) of this section, that obstructs the meshes of the net in any manner, or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum established pursuant to § 648.144(a)(1)(i).

(ii) No person on any vessel may possess or fish with a net capable of catching black sea bass in which the bars entering or exiting the knots twist around each other.

(4) *Stowage of nets*. Otter trawl vessels subject to the minimum mesh-size requirement of paragraph (a)(1)(i) of this section may not have ''available for immediate use'' any net or any piece of net that does not meet the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size requirement. A net that is stowed in conformance with one of the methods specified in § 648.23(b) and that can be shown not to have been in recent use, is considered to be not ''available for immediate use.''

(5) *Roller gear*. Rollers used in roller rig or rock hopper trawl gear shall be no larger than 18 inches (45.7 cm) in diameter.

(b) *Pot and trap gear restrictions*—(1) *Escape vents*. All black sea bass traps or pots must have an escape vent placed in a lower corner of the parlor portion of the pot or trap which complies with one

of the following minimum sizes: 1.125 inches (2.86 cm) by 5.75 inches (14.61 cm); or a circular vent 2 inches (5.08 cm) in diameter; or a square vent with sides of 1.5 inches (3.81 cm), inside measure. These dimensions may be adjusted pursuant to the procedures in § 648.140.

(2) *Gear marking.* The owner of a vessel issued a black sea bass moratorium permit must mark all black sea bass pots or traps with the vessel's USCG documentation number or state registration number.

(3) *Degradable panels.* Black sea bass pots or traps must have the hinges and fasteners of one panel or door made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16 inches (4.8 mm) diameter or smaller; or

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.094 inches (2.4 mm) diameter or smaller.

(4) *Ghost panels.* Black sea bass traps or pots must contain a panel affixed to the trap or pot with degradable fasteners as specified in § 648.144(b)(3) and which measures at least 3.0 inches (7.62 cm) by 6.0 inches (15.24 cm).

(5) *Lathes spacing.* Pots or traps constructed of wooden lathes must have spacing of a least 1.125 inches (2.8575 cm) between one set of lathes in the parlor portion of the trap.

§ 648.145 Possession limit.

A possession limit will be established pursuant to the procedures in § 648.140 to assure that the recreational harvest limit is not exceeded.

(a) If whole black sea bass are processed into fillets, an authorized officer will convert the number of fillets to whole black sea bass at the place of landing by dividing fillet number by two. If black sea bass are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole black sea bass.

(b) Black sea bass harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of black sea bass on board by the number of persons aboard, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(c) Owners or operators of otter trawl vessels issued a moratorium permit under § 648.4(a)(7) and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh requirements and that are not stowed in accordance with § 648.144(a)(4), may not retain 100 lb or more (45.4 kg or more) of black sea bass. Black sea bass on board these vessels shall be stored so as to be readily available for inspection in a standard 100–lb (45.4–kg) tote.

§ 648.146 Special management zones.

The recipient of a Corps of Engineers permit for an artificial reef, fish attraction device, or other modification of habitat for purposes of fishing may request that an area surrounding and including the site be designated by the Council as a Special Management Zone (SMZ). The SMZ would prohibit or restrain the use of specific types of fishing gear that are not compatible with the intent of the artificial reef or fish attraction device or other habitat modification. The establishment of an SMZ would be effected by a regulatory amendment pursuant to the following procedure:

(a) A SMZ monitoring team comprised of members of staff from the MAFMC, NMFS Northeast Region, and NMFS Northeast Fisheries Science Center will evaluate the request in the form of a written report considering the following criteria:

(1) Fairness and equity.

(2) Promotion of conservation.

(3) Avoidance of excessive shares.

(4) Consistency with the objectives of Amendment 9 to the Fishery Management Plan for the Summer Flounder, Scup and Black Sea Bass fisheries, the Magnuson Act, and other applicable law.

(5) The natural bottom in and surrounding potential SMZs.

(6) Impacts on historical uses.

(b) The Council Chairman may schedule meetings of Industry Advisors and/or the Scientific and Statistical Committee to review the report and associated documents and to advise the Council. The Council Chairman may also schedule public hearings.

(c) The Council, following review of the SMZ monitoring teams's report, supporting data, public comments, and other relevant information, may recommend to the Regional Director that a SMZ be approved. Such a recommendation would be accompanied by all relevant background information.

(d) The Regional Director will review the Council's recommendation. If the Regional Director concurs in the recommendation, he or she will publish a proposed rule in the Federal Register in accordance with the recommendations. If the Regional Director rejects the Council's recommendation, he or she shall advise the Council in writing of the basis for the rejection.

(e) The proposed rule shall afford a reasonable period for public comment. Following a review of public comments and any information or data not previously available, the Regional Director will publish a final rule if he or she determines that the establishment of the SMZ is supported by the substantial weight of evidence in the administrative record and consistent with the Magnuson Act and other applicable law.

[FR Doc. 96–21259 Filed 8–16–96; 2:14 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 163
Wednesday, August 21, 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

Agricultural Marketing Service

[Docket No. FV96–989–2NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision of a currently approved information collection for Raisins Produced from Grapes Grown in California, Marketing Order No. 989.

DATES: Comments on this notice must be received by October 21, 1996 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2530–S., P.O. Box 96456, Washington, D.C. 20090–6456; Tel: (202) 205–2829, Fax (202) 720–5698.

SUPPLEMENTARY INFORMATION:

Title: Raisins Produced from Grapes Grown in California, Marketing Order No. 989.

OMB Number: 0581–0083.

Expiration Date of Approval: March 31, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), marketing order programs are established if favored by producers in referenda. The handling of the commodity is regulated. The Secretary of Agriculture is authorized to oversee order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the California raisin marketing order program, which has been operating since 1949.

The California raisin marketing order authorizes the issuance of grade and condition standards, inspection requirements, and volume regulations through a producer reserve pool. The producer reserve pool raisins are sold through the export incentive and merchandising programs, government purchases of raisins, sales pursuant to the order, and a raisin diversion program. Regulatory provisions apply to raisins shipped both within and out of the production area to any market, except those specifically exempt. This order also has authority for market research and development projects, including paid advertising. Pursuant to Section 608(e)(1) of the AMAA, import grade and condition requirements are implemented on raisins imported into the United States.

The order, and rules and regulations issued thereunder, authorize the Raisin Administrative Committee (Committee), the agency responsible for local administration of the order, to require handlers and processors to submit certain information. In addition, raisin producers who voluntarily apply to participate in a raisin diversion program are required to submit certain information. Under the AMAA, importers are also required to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The Committee has developed forms as a convenience to persons who are required to file information with the Committee relating to raisin inventories, acquisition of standard raisins, shipments, dispositions, and other information needed to carry out the purposes of the Act and the Order. Since shipments of raisins continue year-round, these forms are utilized throughout the crop year. A USDA form is used to allow producers to vote on amendments to or continuance of the marketing order. In addition, raisin producers and handlers who are nominated by their peers to serve as representatives on the Committee must file nomination forms with the Secretary.

Formal rulemaking amendments to the order must be approved in referenda conducted by the Secretary. Also, the Secretary may conduct a continuance referendum to determine industry support for continuation of the order. Such referenda ballots are included in this request.

These forms require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Division regional and headquarter's staff, and authorized employees of the Committee. Authorized Committee employees and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.14715 hours per response.

Respondents: California raisin producers, handlers, processors, and importers.

Estimated Number of Respondents: 1,084.

Estimated Number of Responses per Respondent: 14.095.

Estimated Total Annual Burden on Respondents: 2584 hours.

Comments are invited 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 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.

Comments should reference OMB No. 0581–0083 and the California Raisin Marketing Order No. 989, and be sent to USDA in care of Valerie L. Emmer at the address above. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 16, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–21330 Filed 8–20–96; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

Farmland Protection Program

AGENCY: Commodity Credit Corporation, United States Department of Agriculture (USDA).

ACTION: Notice of Request of Proposals (RFP).

SUMMARY: Section 388 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) established the Farmland Protection Program (FPP). The Commodity Credit Corporation (CCC) administers the FPP under the general supervision of the Vice President of the CCC who is the Chief of the Natural Resources Conservation Service (NRCS). CCC is requesting proposals from States, Tribes, and units of local government to cooperate in the acquisition of conservation easements or other interests in prime, unique, or other productive soil for the purpose of limiting non-agricultural uses of that land.

DATES: Proposals must be received by September 13, 1996.

ADDRESSES: Please send proposals to Ann E. Carey, Director, Community Assistance and Resource Development Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890. Fax: 202–690–0639; e-mail: acarey@usda.gov. Attention: FPPRFP.

FOR FURTHER INFORMATION CONTACT: Ann E. Cary, Director, Community Assistance and Resource Development Division, Natural Resources Conservation Service, phone: 202–720–2847; fax: 202–690–0639; e-mail: acarey@usda.gov. Attention: FPP.

SUPPLEMENTARY INFORMATION:

Availability of Funding in Fiscal Year 1996

Effective on the date of publication of this notice, the CCC will accept proposals from States, Tribes, and units of local government that have pending offers with landowners for the acquisition of conservation easements or other interests in land that contains prime, unique, or other productive soils. The pending offers must be for the purpose of protecting topsoil by limiting non-agricultural uses of the land. CCC will evaluate the merits of the requests for participation utilizing criteria described in this notice and will enter into cooperative agreements with the States, Tribes, or units of local government that have proposals that CCC determines will effectively meet the objectives of the FPP. CCC must receive proposals for participation by September 13, 1996.

Background

According to the 1987 Census of Agriculture, one-third of the Nation's agricultural products are produced in metropolitan counties containing large cities. Another one-fourth of these agricultural products are produced in counties adjacent to significant urban populations. Historically, American settlements were located in areas where the land was most productive. Consequently, some of the Nation's most valuable and productive farmland is located in urban and developing areas. Nearly 85 percent of domestic fruit and vegetable production and 80 percent of our dairy products come from urban-influenced areas.

These areas are continually threatened by rapid development and urban sprawl. Several social and economic changes over the past three decades have influenced the rate at which land is converted to urban uses. Population growth and shifts in age distribution, the economy, and transportation have contributed to changes in agricultural land conversion rates. Urban sprawl has been a major cause of farmland development. Since 1960, an average of 1.5 million acres of farmland have been converted to other uses each year.

The gross acreage of farmland converted to urban development is not necessarily the most troubling concern. A greater cause for concern is the quality of farmland that is being converted. In most States, prime farmland is being converted at 2 to 4 times the rate of other less-productive land. In addition, as development does occur, remaining acreage is placed under a greater environmental, economic, and social strain as agrarian and urbanizing interests compete. For the agricultural producer, increasing costs of production and liability risks are harmful byproducts of urban development. In addition, remaining acreage must be farmed more intensively, generating adverse impacts on water quality and soil health. For urban dwellers, issues such as pesticide overspray, animal nutrient odors, and noise are important concerns.

There is, therefore, an important national interest in the protection of farmland. Once developed, productive farmland with rich topsoil may be lost forever. Food security for the Nation must be taken into account. Agricultural lands are important components of historic landscapes and are equally important simply for their scenic beauty.

Legislative History

In the 1980 Farm Bill, Congress passed the Farmland Protection Policy Act (FPPA) (Pub. L. 97–98, Title XV, Subtitle I; 7 U.S.C. 4201–4209), which began the Federal government's effort to protect farmland from urbanization. Under this program, Federal agencies are required to evaluate the impacts of federally funded programs on converting farmland to non-agricultural uses, and consider alternative actions that would lessen the adverse impacts.

In 1990, Congress enacted the Farms for the Future (FFF) Act (Chapter 2, Subtitle E, Title XIV of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624) which authorized the Agricultural Resource Conservation Demonstration Program. This program provided guaranteed loans and subsidized interest payments to help States finance farmland protection efforts. The USDA received funding appropriations for fiscal years 1992–94. Vermont was the only State to qualify for funding under FFF. No funds were appropriated for fiscal years 1995 and 1996. The program's statutory authority expires on September 30, 1996.

The Federal Agriculture Improvement and Reform Act of 1996

Enacted on April 4, 1996, section 388 of the 1996 Act directs the Secretary of Agriculture to establish and carry out the FPP. Under this program, the USDA

will purchase conservation easements or other interests in land with prime, unique, or other productive soil that is subject to a pending offer from a State or local government for the purpose of protecting topsoil by limiting non-agricultural uses of the land.

Overview of the Farmland Protection Program

The FPP is intended to supplement State and local farmland programs. CCC will administer FPP through existing delivery systems. The NRCS is the agency responsible for administering the FPP in the field. The 1996 Act made up to $35 million of funds available through the CCC to purchase easements or other interests with States, Tribes, or local agencies for farmland protection. The NRCS also encourage State and local entities to start new farmland protection programs by putting in place a superstructure and soliciting offers in order to be eligible for FPP program benefits.

NRCS State Conservationists may consult with the State Technical Committee (established pursuant to 16 U.S.C. 3861) and review the requests for participation for consistency with USDA priorities by using a ranking system (see discussion below), such as the Land Evaluation and Site Assessment (LESA) or other site evaluation and ranking systems to determine: the likelihood of conversion considering developmental pressure, zoning, utility availability, and other related factors; the quality of the land considering the soils, economic viability, size and product sales; and other factors including its historical, scenic and environmental qualities.

Once all proposals for participation have been received, the Chief of NRCS, as a Vice President of the CCC, will authorize cooperative agreements to be developed by September 30, 1996, spelling out terms of the FPP for each proposal accepted. Allocation of the funds to the cooperating entities will be made by weighing such factors as the number of pending offers, the total number of eligible acres included in the offers, the capability of each entity to fund at least half of the acquisition costs of each of the offers selected for funding, the value of such offers, and the relative urgency of each offer.

To be selected for participation in the FPP, a pending offer must provide for the acquisition of an easement or other interests in land for a minimum duration of 30 years, with priority given to those offers providinn. If a pending offer is selected for participation in the FPP, the conveyance document used by the State or local program will contain a reversionary clause. The reversionary clause will provide that all rights conveyed by the landowner under the document will become vested in the United States should the State or local program abandon or terminate the exercise of the rights so acquired. As a condition for participation, all lands enrolled shall be encompassed by a conservation plan developed and implemented according to the NRCS Field Office Technical Guide.

Eligible State, Tribal, or Local Farmland Protection Programs

A State, Tribe, or unit of local government that has a farmland protection program that purchases agricultural conservation easements for the purpose of protecting topsoil by limiting non-agricultural uses of land and that has pending offers may apply for participation as a cooperating entity with the FPP. A State, Tribe, or local program may apply for participation by submitting responses to the RFP to Ann E. Carey, Director, Community Assistance and Resource Development Division, NRCS.

NRCS will evaluate the State, Tribe, or local program based on the conservation benefits that are derived from such farmland protection efforts. An eligible State, Tribe, or local farmland protection program must: (1) Have demonstrated commitment to a long-term conservation of agricultural lands through legal devices, such as right-to-farm laws, agricultural districts, zoning, or land use plans; (2) use voluntary easements or other legal devices to protect farmland from conversion to non-agricultural uses; and (3) demonstrate a capability to acquire, manage, and enforce rights in land and interests in land. To avoid double counting, local and county programs must coordinate their proposals with each other and the State program, if their jurisdictions overlap.

Eligible Land

NRCS shall determine whether the farmland is eligible for enrollment and whether, once found eligible, the lands may be included in the program. The following land, if subject to a pending offer by a State, Tribe, or unit of local government, is eligible for enrollment in the FPP: (1) Land with prime, unique, or other productive soil; and (2) Other incidental land that would not otherwise be eligible, but when considered as part of a pending offer, NRCS determines that the inclusion of such land would significantly augment the protection of the associated farmland. The definition of prime, unique, or other productive soil can be found in section 1540(c)(1) of the FPPA, 7 U.S.C. 4201(c)(1).

NRCS will only consider enrolling eligible land in the program that is configured in a size and with boundaries that allow for the efficient management of the area for the purposes of FPP. The land must have access to markets for its products, an infrastructure appropriate for agricultural production, and agricultural support services. NRCS will not enroll land that is owned in fee title by an agency of the United States, or land that is already subject to an easement or deed restriction that limits the conversion of the land to non-agricultural use. NRCS will not enroll otherwise eligible lands if NRCS determines that the protection provided by FPP would not be effective because of on-site or off-site conditions.

Proposals

Proposals submitted by a cooperating entity must include an overview of the program, the amount and source of funds available for easement acquisition, the parameters and their values used to set the acquisition priorities, and a listing of the offers including: (1) The priority of the pending offer; (2) the land parcel and its location; (3) the size of the parcel in acres; (4) the acres of the prime, unique, or other productive soil in the parcel; (5) the price offered by the landowner; (6) the proposed acquisition costs of the easement; (7) the type of easement to be used; (8) an indication of the accessibility to markets; (9) an indication of an existing agricultural infrastructure and other support system; (10) the level of threat from urban development; (11) other factors, such as LESA or other evaluation and assessment system, used for setting priorities for easement acquisition by the entity.

Ranking Considerations

Pending offers by a State, Tribe, or unit of local government must be for the acquisition of an easement or other interest in land for a minimum duration of 30 years. NRCS shall place priority on acquiring easements or other interests in land that provide the longest period of protection from conversion to non-agricultural use. NRCS may place higher priority where lands and locations are found to be the highest priority lands and locations by the States, Tribes, or units of local government based on an evaluation using the Land Evaluation and Site Assessment (LESA) system or other site evaluation and ranking system.

NRCS may also place higher priority on certain geographic regions or other factors where enrollment of particular lands may better achieve NRCS State and regional goals and objectives, or where participation would further existing governmental or private conservation projects. NRCS will give preference to acquisition of easements or interests in land where the cooperating entity shares the greater costs of enrolling such land.

Cooperative Agreements

The CCC will use a cooperative agreement with a State, Tribe, or unit of local government as the mechanism for participation in the FPP. The cooperative agreement will address: (1) The interests in land to be acquired; (2) the management and enforcement of rights; (3) the technical assistance that may be provided by the NRCS; (4) the holder of the easement or other interests in the land enrolled in the FPP; and (5) other requirements deemed necessary by CCC to protect the interests of the United States.

Signed at Washington, DC, on August 16, 1996.

Paul Johnson,

Vice President, Commodity Credit Corporation, Chief, Natural Resources Conservation Service.

[FR Doc. 96–21342 Filed 8–20–96; 8:45 am]

BILLING CODE 3410–16–M

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Report of School Program Operations

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Consumer Service (FCS) is publishing for public comment a summary of a proposed information collection. The proposed collection is an extension of a collection currently approved for the National School Lunch Program, the School Breakfast Program, the Commodity Schools Program, and the Special Milk Program.

DATES: Comments on this notice must be received by October 21, 1996 to be assured of consideration.

ADDRESSES: Send comments and requests for copies of this information collection to Alan Rich, Acting Chief, Data Base Monitoring Branch, Program Information Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of FCS, including whether the information will have practical utility; (b) the accuracy of FCS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 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.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Alan Rich, (703) 305–2113.

SUPPLEMENTARY INFORMATION:

Title: Report of School Program Operations.

OMB Number: 0584–0002.

Expiration Date: November 30, 1996.

Type of Request: Extension of a currently approved collection.

Abstract: The National School Lunch Program, the School Breakfast Program, the Commodity Schools Program, and the Special Milk Program are mandated by the National School Lunch Act, 42 U.S.C. 1751, *et seq.*, and the Child Nutrition Act of 1966, 42 U.S.C. 1771, *et seq.* Program implementing regulations are contained in 7 CFR Parts 210, 215, and 220. In accordance with 7 CFR 210.5(d)(1), § 215.11(c)(2), and § 220.13(b)(2), State agencies must submit a monthly report of program activity in order to receive Federal reimbursement for meals served to eligible participants.

Respondents: State agencies that administer the National School Lunch Program, the School Breakfast Program, the Commodity Schools Program, and the Special Milk Program.

Number of Respondents: 62.

Estimated Number of Responses per Respondent: The number of responses includes initial, revised, and final reports submitted each month. The overall average is four submissions per State agency per reporting month for a total of 48 per year.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 37 hours per respondent.

Estimated Total Annual Burden on Respondents: 110,112 hours.

Dated: August 14, 1996.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 96–21297 Filed 8–20–96; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1997 Economic Census of Transportation—Commodity Flow Survey.

Form Number(s): CFR–1000, CFS–2000.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 805,067 hours.

Number of Respondents: 100,000.

Avg Hours Per Response: 2 hours.

Needs and Uses: The economic census is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Virtually every sector of the U.S. Economy will be covered in the 1997 Economic Census. The 1997 Commodity Flow Survey, a component of the Economic Census, will produce key statistics on the movement of freight in the United States. In the past, these types of data were used primarily by governmental agencies in planning for transportation infrastructure. Now these types of data are becoming increasingly important to the business sector for making decisions related to marketing and transportation strategies. The Commodity Flow Survey will be conducted with the guidance and co-sponsorship of the Bureau of Transportation Statistics, Department of Transportation. A sample of business establishments in mining, manufacturing, wholesale, and selected retail industries will receive, by mail, four questionnaires—one during each quarter of 1997. On each form, an establishment will be asked to report data for an average of 25 shipments selected during a designated one-week reporting period. This survey will provide a range of transportation

statistics including value of shipments, weight of shipments, commodities shipped, mode(s) of transportation used, origin and destination of shipments, ton-miles and average miles per shipment. The Census Bureau will publish shipment characteristics at the national, state, and National Transportation Analysis Region levels.

Affected Public: Businesses or other for profit institutions.

Frequency: Quarterly during 1997.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Sections 131, 193, and 224.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 15, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–21344 Filed 8–20–96; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Docket 62–96]

Foreign-Trade Zone 21, Charleston, South Carolina; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority (SCSPA), grantee of Foreign-Trade Zone 21, Charleston, South Carolina, requesting authority to expand its zone in the Charleston, South Carolina area, within the Charleston Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 9, 1996.

FTZ 21 was approved on June 12, 1975 (Board Order 106, 40 FR 25613, 6/17/75) and expanded on February 28, 1995 (Board Order 734, 60 FR 12735, 3/8/95) and June 20, 1996 (Board Order 832, 61 FR 33491, 6/27/96). The zone project includes 8 general-purpose sites in the coastal area of South Carolina: *Site 1* (134 acres)—Tri-County Industrial Park, Summerville; *Site 2* (57 acres)—Cainhoy Industrial Park, Wando; *Site 3* (160 acres)—Crowfield Corporate Center, Goose Creek; *Site 4* (998 acres)—Low Country Regional Industrial Park, Early Branch; *Site 5* (2,017 acres)—SCSPA's terminal complex, Charleston; *Site 6* (19 acres)—Meadow Street Business Park, Loris; *Site 7* (1,782 acres)—Myrtle Beach International Airport (portion of the former Myrtle Beach U.S. Air Force Base), Myrtle Beach; and, *Site 8* (23 acres; expires 12/31/97)—within Wando Park, Mount Pleasant. An application is currently pending with the Board for an additional site (proposed Site 9) in Charleston, South Carolina (Docket No. 72–95, filed 11/7/95).

The applicant is now requesting authority to expand and remove the time limit for *Site 8* (82 acres) at Wando Park, Wando Park Boulevard, Mount Pleasant. The property is owned by Wando Park Ltd. Partnership and Molasses Creek Management Corporation.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 21, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 4, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 81 Mary Street, Charleston, South Carolina 29402.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: August 14, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–21336 Filed 8–20–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers from Colombia: Extension of Time Limit of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results in the administrative review of the antidumping duty order on certain fresh cut flowers (flowers) from Colombia, covering the period March 1, 1995, through February 29, 1996, since it is not practicable to complete the review within the time limits mandated by the Tariff Act of 1930 (the Act), as amended, 19 U.S.C. 1675(a)(3)(A).

EFFECTIVE DATE: August 21, 1996.

FOR FURTHER INFORMATION CONTACT: Elizabeth Graham or Carole Showers, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4105 or 482–3217, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On April 22, 1996, the Department initiated an administrative review of the antidumping duty order on flowers from Colombia, covering the period March 1, 1995, through February 29, 1996 (61 FR 17685). In our notice of initiation, we stated that we intended to issue the final results of this review no later than March 31, 1997.

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not

practicable to issue the preliminary results in 245 days, section 751(a)(3)(A) allows the Department to extend this time period to 365 days.

We determine that it is not practicable to issue the preliminary results within 245 days because the review involves collecting and analyzing information from a large number of companies. Further, there are new legal issues to address because this is the first review of this antidumping duty order under the new law.

Accordingly, the deadline for issuing the preliminary results of this review is now no later than March 31, 1997. The deadline for issuing the final results of this review will be 120 days from the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: August 15, 1996.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 96–21337 Filed 8–20–96; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

Notice of Government Owned Invention Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

SUMMARY: The invention listed below is owned by the U.S. Government, as represented by the Department of Commerce, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: Marcia Salkeld, National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into one or more Cooperative Research and Development Agreements (''CRADA'') with licensees to perform further research on the invention for purposes of commercialization. NIST may grant licensees an option to negotiate for exclusive licenses to any jointly owned inventions which arise from the CRADAs as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which arise from the CRADAs.

The invention available for licensing is:

NIST Docket No. 96–009

Title: Interferometric Thickness Variation Test Method For Windows and Silicon Wafers Using a Diverging Wavefront

Description: A non-contact method of using an infrared interferometer for determining a full aperture map of thickness variation and central thickness of silicon wafers and windows. The IR interferometer maps the thickness variation over the entire wafer surface in one rapid measurement. A second measurement with the same device determines the central thickness of the wafer. If the wafer has substantial bow, a third measurement with the wafer reversed permits determination of the bow and separation of its effect from the thickness variation measurement.

Dated: August 12, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–21263 Filed 8–20–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 081596F]

South Atlantic 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 South Atlantic Fishery Management Council will hold a meeting of the Snapper Grouper Plan Development Team (PDT). The agenda will include review of Amendments 8 & 9, review of assessment reports, review of stock status, develop additional items for the next amendment to the snapper grouper fishery management plan, and develop data/research needs.

DATES: The meeting will be held on September 9-11, 1996. The PDT will meet from 1:30 p.m. to 5 p.m. on September 9; from 8:30 a.m. to 12 noon and 1:30 p.m. to 5 p.m. on September 10; and from 8:30 a.m. to 12 noon on September 11.

ADDRESSES: The meetings will be held at the NMFS Laboratory in Beaufort, NC; telephone: 919-728-8716.

Council address: South Atlantic Fishery Management Council; One Southpark Circle, Suite 306; Charleston, SC 29407-4699

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: 803–571-4366; fax: 803–769-4520; e-mail: susan_buchanan@safmc.nmfs.gov

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 2, 1996.

Dated: August 15, 1996.

Richard H. Schaefer,

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

[FR Doc. 96–21317 Filed 8–20–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 081496B]

Endangered Species; Permits

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

ACTION: Issuance of permit 1,010 (P503S) and permit 1,011 (P211J).

SUMMARY: Notice is hereby given that NMFS has issued two permits that authorize takes of an Endangered Species Act-listed species for the purpose of scientific research/enhancement, subject to certain conditions set forth therein, to the Idaho Department of Fish and Game at Boise, ID and the Oregon Department of Fish and Wildlife (ODFW) at Portland, OR.

ADDRESSES: The applications 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).

SUPPLEMENTARY INFORMATION: The permits were issued 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 217–222).

Notice was published on May 20, 1996 (61 FR 25208) that an application had been filed by IDFG (P503S) for a scientific research/enhancement permit. Permit 1,010 was issued to IDFG on

August 13, 1996. Permit 1,010 authorizes IDFG takes of adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a captive rearing program for three populations of chinook salmon in Idaho. Under the permit, IDFG is authorized to collect ESA-listed, naturally-produced chinook salmon parr annually from the upper Salmon River tributaries of West Fork Yankee Fork, upper East Fork, and Lemhi River; transport the collected fish to hatcheries; and rear them to maturity. IDFG plans to release healthy hatchery-reared adults in the wild to supplement the respective natural-spawning populations. However, because a protocol for fish releases has not been fully developed, permit 1,010 does not authorize the release of fish from the captive rearing program. NMFS has conditioned permit 1,010 to require IDFG to apply for a modification to the permit for authorization to release fish from the program, expected to begin in 1998.

The captive rearing program was initiated when NMFS issued emergency permit 972 to IDFG on August 7, 1995 (60 FR 42147, August 15, 1995). Permit 1,010 replaces permit 972. The takes of ESA-listed chinook salmon previously authorized under permit 972 have been incorporated into permit 1,010. Permit 972 is now inactive. Permit 1,010 expires on December 31, 2000.

Notice was published on May 20, 1996 (61 FR 25208) that an application had been filed by ODFW (P211J) for a scientific research/enhancement permit. On July 24, 1996, a public hearing took place on ODFW's request for a permit in La Grande, OR (61 FR 35727, July 8, 1996). Permit 1,011 was issued to ODFW on August 13, 1996. Permit 1,011 authorizes ODFW takes of adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a captive broodstock program for three populations of chinook salmon in Oregon. ODFW is authorized to collect ESA-listed, naturally-produced chinook salmon parr annually from the Grande Ronde River tributaries of Catherine Creek, the Lostine River, and the upper Grande Ronde River; transport the collected fish to hatcheries; rear the fish to maturity; and spawn them. ODFW plans to release the healthy progeny of the hatchery-spawned fish in the wild to supplement the respective natural populations. However, because a protocol for fish releases has not been fully developed, permit 1,011 does not authorize the release of fish from the captive broodstock program. NMFS has conditioned permit 1,011 to require ODFW to apply for a modification to the permit for authorization to release fish from the program, expected to begin in 1998.

The captive broodstock program was initiated when NMFS issued emergency permit 973 to ODFW on August 7, 1995 (60 FR 42147, August 15, 1995). Permit 1,011 replaces permit 973. The takes of ESA-listed chinook salmon previously authorized under permit 973 have been incorporated into permit 1,011. Permit 973 is now inactive. Permit 1,011 expires on December 31, 2000.

Issuance of the permits, as required by the ESA, was based on a finding that such permits: (1) Were requested in good faith, (2) will not operate to the disadvantage of the ESA-listed species that is the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: August 15, 1996.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–21296 Filed 8–20–96; 8:45 am]

BILLING CODE 3510–22–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 21, 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 15, 1996.

Arthur F. Chantker,

Acting Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Integrated Postsecondary Education Data System (IPEDS) 1996 Through 1997/1998.

Frequency: Annually.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local or Tribal Governments, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 10,114.

Burden Hours: 37,174.

Abstract: The IPEDS provides information on postsecondary education—it's providers, enrollments, completions, and finances in addition to other information. The recent publication of final regulations for Student Right-to-Know and changes in financial accounting standards for nonprofit institutions have made it necessary for NCES to modify the IPEDS data collection for 1996 and 1997 to help institutions adapt to these changes.

[FR Doc. 96–21243 Filed 8–20–96; 8:45 am]

BILLING CODE 4000–01–P

President's Advisory Commission on Educational Excellence for Hispanic Americans; Notice of a Public Forum

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming forum of the President's Advisory Commission on Educational Excellence for Hispanic Americans. This notice also describes the functions of the Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: 1. Thursday, September 12, 1996 from 9 a.m. (cst) until 5 0p.m. (cst); 2. Friday, September 13, 1996 from 9 a.m. (cst) until 5 p.m. (cst).

ADDRESSES: San Antonio, Texas.

Call Vanessa Rini at (202) 401–2147 for the location of the forum.

FOR FURTHER INFORMATION CONTACT: Vanessa Rini, Special Assistant, White House Initiative on Educational Excellence for Hispanic Americans. Her mailing address is U.S. Department of Education, 600 Independence Ave. SW., RM 2115, Washington, DC 20202–3601 and her e-mail address is vanessa_rini@ed.gov.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans was established under Executive Order 12900, which was effective on February 22, 1994. The Commission was established to provide the President and the Secretary of Education with advice on (a) the progress of Hispanic Americans toward achievement of the National Goals and other standards of educational accomplishment; (b) the development, monitoring, and education for Hispanic Americans; (c) ways to increase State, private sector, and community involvement in improving education; and (d) ways to expand and complement Federal education initiatives.

This forum is open to the public. The Commission will discuss issues which affect the quality of education obtained by Hispanic Americans.

Records are kept of all Council proceedings, and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanic Americans from the hours of 9 a.m. to 5 p.m. (est).

G. Mario Moreno,

Assistant Secretary.

[FR Doc. 96–21340 Filed 8–20–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Dockets No. EA–119 and EA–120]

Application to Export Electric Energy; Edison Source

AGENCY: Office of Fossil Energy, DOE

AGENCY: Notice of Application.

SUMMARY: Edison Source has submitted applications to export electric energy to Mexico and Canada pursuant to section 202(e) of the Federal Power Act. Edison Source is both a broker and a marketer of electric energy. It does not own or control any electric generation or transmission facilities.

DATES: Comments, protests or requests to intervene must be submitted on or before September 20, 1996.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Warren E. Williams (Program Office) 202–586–9629 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On July 31, 1996, Edison Source filed two applications with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy, as a power marketer, to Mexico and Canada pursuant to section 202(e) of the FPA. Edison Source neither owns nor controls any facilities for the transmission or distribution of electricity, nor does it have a franchised service area. Rather, Edison Source is a power marketer authorized by the Federal Energy Regulatory Commission (FERC) to engage in wholesale sale of electricity in interstate commerce at negotiated rates pursuant to its filed rate schedules.

The electric energy Edison Source proposes to transmit to Mexico and Canada will be purchased from electric utilities and other entities as permitted by the FERC. Edison Source agrees to comply with the terms and conditions contained in the export authorization issued for those cross-border facilities it proposes to use as well as any other conditions imposed by DOE, including providing written evidence that sufficient transmission access to compete the export transaction has been obtained.

In Docket EA–119, Edison Source proposed to export the electric energy to Mexico over one or more of the following international transmission lines for which Presidential permits (PP) have been previously issued:

Location	Voltage	Owner	Presidential permit
Miguel, CA	230 kV	SDG&E	PP–68.
Imperial Valley, CA	230 kV		PP–79.
Diablo, NM	115 kV	El Paso Electric	PP–92.
Ascarate, TX	115 kV		PP–48.
Brownsville, TX	138 kV	CPL	PP–94.
Eagle Pass, TX	138 kV	CFE	PP–50.
Laredo, TX	138 kV	CFE	PP–57.
Falcon Dam, TX	138 kV	CFE	Not required.

In docket EA–120, Edison Source proposes to export the electric energy to Canada over one or more of the following international transmission lines for which Presidential permits (PP) have been previously issued:

Location	Voltage	Owner	Presidential permit
Tioga, ND	230-kV	Basin Electric	PP–64.
Blaine, WA	2–500-kV	BPA	PP–10.
Nelway, BC	230-kV		PP–36.
Nelway, BC	230-kV		PP–46.
Derby Line, VT	120-kV	Citizens Utilities	PP–66.
St. Clair, MI	345-kV	Detroit Edison	PP–38.
Maryville, MI	230-kV		PP–21.
Detroit, MI	230-kV		PP–21.
St Clair, MI	345-kV		PP–58.
Franklin, VT	120-kV [1]	Joint Owners of the Highgate Project.	PP–82.
Houlton, ME	345-kV	Maine Electric Power Co	PP–43.
Arostock Cnty, ME	138-kV	Maine Public Svs.	PP–29.
Intnl Falls, MN	115-kV	Minnesota Power	PP–78.
Roseau Cnty, MN	230-kV	Minnkota Power Corp.	PP–61.
Massena, NY	2–230-kV	NYPA	PP–25.
Devils Hole, NY	230-kV		PP–30.
Massena, NY	765-kV		PP–56.
Niagara Falls, NY	2–345-kV		PP–74.
Devils Hole, NY	230-kV	Niagara Mohawk	PP–30.
Red River, ND	230-kV	Northern States	PP–45.
Roseau, MN	500-kV	Power Co.	PP–63.
Norton, VT	450-kV DC	Vermont Electric Transmission Co	PP–76.

[1] These facilities were constructed at 345-kV but operated at 120-kV.

Procedural Matters

Any persons desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Comments on Edison Source's request to export to Mexico should be clearly marked with Docket No. EA–119. Comments on Edison Source's request to export to Canada should be clearly marked with Docket No. EA–120. Additional copies are to be filed directly with: Joseph C. Bell, Jolanta Sterbenz, Hogan & Hartson L.L.P., Counsel for Edison Source, 555 Thirteenth Street, NW, Washington, DC 20004–11009.

A final decision will be made on this applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on August 15, 1996.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 96–21272 Filed 8–20–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Intent to Prepare an Environmental Impact Statement for Disposal of the S3G and D1G Prototype Reactor Plants

AGENCY: Department of Energy.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of Energy (DOE) Office of Naval Reactors (Naval Reactors) announces its intent to prepare an Environmental Impact Statement pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, in accordance with the Council on Environmental Quality regulations for implementing NEPA (40 CFR Parts 1500–1508) and the DOE NEPA regulations (10 CFR Part 1021), and to conduct a public scoping meeting. This Environmental Impact Statement will address final disposal of the S3G and D1G Prototype reactor plants, located in West Milton, New York. Naval Reactors is preparing this Environmental Impact Statement to focus on the potential for significant environmental impacts and to consider reasonable alternatives.

Naval Reactors invites interested agencies, organizations, and the general public to submit written comments or suggestions concerning the scope of the issues to be addressed, alternatives to be analyzed, and the environmental impacts to be addressed in the Draft Environmental Impact Statement. The public also is invited to attend a scoping meeting in which oral comments and suggestions will be received. Oral and written comments will be considered equally in preparation of the Environmental Impact Statement. Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the Draft Environmental Impact Statement for review when it is issued, should write to Mr. A. S. Baitinger at the address below. When the Draft Environmental Impact Statement is complete, its availability will be announced in the Federal Register and in the local news media. A public hearing will be held, and comments will be solicited on this document.

DATES: Written comments postmarked by September 23, 1996 will be considered in preparation of the Draft Environmental Impact Statement. Comments postmarked after that date will be considered to the extent practicable. Oral and written comments will be received at a public scoping meeting to be held September 10, 1996 at the Town of Milton Community Center at the address listed below.

ADDRESSES: Written comments, suggestions on the scope of the Draft Environmental Impact Statement, or requests to speak at the public scoping meeting should be submitted to Mr. A. S. Baitinger, Chief, West Milton Field Office, Office of Naval Reactors, U.S. Department of Energy, P.O. Box 1069, Schenectaday, New York 12301; telephone (518) 884–1234. The public scoping meeting will be held at 7 pm on September 10, 1996 at the Town of Milton Community Center, 310 Northline Road, Balston Spa, New York.

SUPPLEMENTARY INFORMATION:

Background

The S3G and D1G Prototype reactor plants are located on the Kesselring Site in West Milton, New York, approximately 17 miles north of Schenectady. The S3G and D1G Prototype reactor plants first started operation in 1958 and 1962 respectively, and served for more than 30 years as facilities for testing reactor plant components and equipment and for training Naval personnel. As a result of the end of the Cold War and the downsizing of the Navy, the S3G Prototype reactor plant was shut down in 1991 and has been defueled, drained, and placed in a stable protective storage condition. The D1G Prototype reactor plant was shut down in March 1996 and is currently undergoing defueling.

Preliminary Description of Alternatives

1. Prompt Dismantlement

This alternative would involve the prompt dismantlement of the reactor plants. All S3G and D1G reactor plant systems, components and prototype structures would be removed from the Kesselring Site. To the extent practicable, the resulting low-level radioactive metals would be recycled at existing commercial facilities that recycle radioactive metals. The remaining low-level radioactive waste would be disposed of at the DOE Savannah River Site in South Carolina. The Savannah River Site currently receives low-level radioactive waste from Naval Reactors sites in the eastern United States. Both the volume and radioactive content of the S3G and D1G Prototype reactor plant low-level waste fall within the projections of Naval Reactors waste provided to the Savannah River Site, which in turn are included in the Savannah River Site Waste Management Final Environmental Impact Statement dated July 1995. Transportation of low-level radioactive waste to the DOE Hanford Site in Washington State will also be evaluated.

2. Deferred Dismantlement

This alternative would involve keeping the defueled S3G and D1G Prototype reactor plants in protective storage for 30 years before dismantlement. Deferring dismantlement for 30 years would allow nearly all of the cobalt-60 radioactivity to decay away. Nearly all of the gamma radiation within the reactor plant comes from cobalt-60.

3. No Action

This alternative would involve keeping the defueled S3G and D1G Prototype reactor plants in a protective storage indefinitely. Since there is some residual radioactivity with very long half lives such as nickel–59 in the defueled reactor plants, this alternative would leave this radioactivity at the Kesselring Site indefinitely.

4. Other Alternatives

Other alternatives include permanent on-site disposal. Such onsite disposal could involve building an entombment structure over the S3G and D1G Prototype reactor plants or developing a below ground disposal area at the Kesselring Site. Another alternative would be to remove the S3G and D1G Prototype reactor plants as two large reactor compartment packages for offsite disposal.

Preliminary Identification of Environmental Issues

The following issues, subject to consideration of comments received in response to public scoping, have been tentatively identified for analysis in the Environmental Impact Statement. This list is presented to facilitate public comment on the scope of the Environmental Impact Statement. It is not intended to be all inclusive nor is it intended to be a predetermination of impacts.

1. Potential impacts to the public and on-site workers from radiological and non radiological releases caused by activities to be conducted within the context of the proposed action and alternatives.
2. Potential environmental impacts, including air and water quality impacts, caused by the proposed action and alternatives.
3. Potential transportation impacts as a result of the proposed action and alternatives.
4. Potential effect on endangered species, floodplain/wetlands, and archeological/historical sites as a result of the proposed action and alternatives.
5. Potential impacts from postulated accidents as a result of the proposed action and alternatives.
6. Potential socioeconomic impacts to the surrounding communities as a result of implementing the proposed actions and alternatives.
7. Potential cumulative impacts from the proposed action and other past, present, and reasonably foreseeable future actions.
8. Potential irreversible and irretrievable commitment of resources.

Public Scoping Meeting

The public scoping meeting will be chaired by a presiding officer but will not be conducted as an evidentiary hearing; speakers will not be cross examined although the presiding officer and Naval Reactors representatives present may ask clarifying questions. To ensure that everyone has an adequate opportunity to speak, five minutes will be allotted for each speaker. Depending on the number of persons requesting to speak, the presiding officer may allow more time for elected officials, or speakers representing multiple parties, or organizations. Persons wishing to speak on behalf of organizations should identify the organization. Persons wishing to speak may either notify Mr. Baitinger in writing at the address provided above or register at the meeting. As time permits, individuals who have spoken subject to the five minute rule will be afforded additional speaking time. Written comments also will be accepted at the meeting.

Issued at Arlington, VA this 13th day of August 1996.

B. DeMars,

Admiral, U.S. Navy, Director, Naval Nuclear Propulsion Program.

[FR Doc. 96–21271 Filed 8–20–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. RP95–408–000 and RP95–408–001]

Columbia Gas Transmission Corp.; Notice of Informal Settlement Conference

August 15, 1996.

Take notice that an informal settlement conference in this preceding will be convened on Thursday, August 22, 1996 at 10:00 a.m. and, if necessary, Friday August 23, 1996 at 10:00 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, contact Thomas J. Burgess at 208–2058 or David R. Cain at 208–0917.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21265 Filed 8–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–696–000]

East Tennessee Natural Gas Company; Notice of Application

August 15, 1996.

Take notice that on August 7, 1996, East Tennessee Natural Gas Company (East Tennessee) filed an application in Docket No. CP96–696–000 pursuant to Section 7(c) of the Natural Gas Act, and Subpart A of Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing it to construct a total of approximately 6 miles of pipeline looping, a total of approximately 1,820 horsepower in engine upgrades at five compressor stations, and miscellaneous new taps and metering facilities, to provide for an additional 31,902 Dth/d in firm transportation capacity, all as set forth in its application. East Tennessee estimates that the total cost of the project will be $12,915,473. East Tennessee states that it will seek to roll the costs associated with this expansion into its general system rates, and that it seeks an advance determination that such rate treatment is appropriate. East Tennessee states that the facilities are required in order to meet increased demand for natural gas transportation service by its customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 5, 1996, file with the Federal Energy Regulatory Commission, 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 385.211 and 385.214 (1993)) and the Regulations under the Natural Gas Act (18 CFR 157.10 (1993)). 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 jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that 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 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 East Tennessee to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21247 Filed 8–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–316–001]

Florida Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

August 15, 1996.

Take notice that on August 13, 1996, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective September 2, 1996.

Substitute Thirteenth Revised Sheet No. 8B
Substitute Sixth Revised Sheet No. 8B.01

FGT states that on July 23, 1996, FGT made a filing in the instant docket (July 23 Filing) proposing modifications to twenty-nine tariff sheets to modify or clarify certain provisions in conformance with previous tariff changes approved by the Commission, to make minor corrections, and to update certain curtailment information. FGT requested an effective date of September 1, 1996, for the tariff changes proposed in the July 23, filing.

FGT states that the two of the tariff sheets included in the July 23, Filing were Thirteenth Revised Sheet No. 8B and Sixth Revised Sheet No. 8B.01 which contain the rates and charges for service in FGT's Western Division. The changes proposed in these tariff sheets simply added language to the Fuel Reimbursement Charge Percentage clarifying the Western Division shippers would be responsible for any fuel charged FGT by upstream Transporting Pipelines. The rates for service on these tariff sheets reflected reduced rates proposed by FGT in Docket No. RP96–309 filed on July 3, 1996 (July 3 Filing) which were also proposed to become effective on September 1, 1996. In the July 23, Filing, FGT assumed that the new rates proposed on Twelfth Revised Sheet No. 8B and Fifth Revised Sheet No. 8B.01 filed with the July 3 Filing in Docket No. RP96–309 would be approved to become effective on September 1, 1996 and included the fuel charge language on Thirteenth Revised Sheet No. 8B and Sixth Revised Sheet No. 8B.01 ''on top of'' such new rates.

However, FGT had stated in the July 3 Filing that the requested effective date of September 1, 1996 was contingent upon FGT receiving final authorization from the Commission in July 1996 to abandon certain facilities as requested in Docket No. CP96–12. Such final authorization has not been received and FGT is filing concurrently herewith a Request to Delay Action on FGT's July 3, Filing in Docket No. RP96–309 pending issuance of a final order in Docket No. CP96–12.

Consequently, Thirteenth Revised Sheet No. 8B and Sixth Revised Sheet No. 8B.01 filed July 23, 1996, in the instant docket reflect rates which FGT no longer proposes to become effective September 1, 1996, as well as the clarifying changes. FGT is filing herein to reflect the currently effective rates on Sheet Nos. 8B and 8B.01 rather than the rates proposed in Docket No. RP96–309.

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 Rule 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 appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21249 Filed 4–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–296–001]

K N Interstate Gas Transmission Co.; Notice of Compliance Filing

August 15, 1996.

Take notice that on August 12, 1996, K N Interstate Gas Transmission Company (KNI) tendered for filing to become part of its FERC Gas Tariff,

Third Revised Volume No. 1–A and Third Revised Volume No. 1–B, certain revised tariff sheets listed in the filing in compliance with the Commission's July 31, 1996, Order in the above-referenced proceeding. KNI proposes an effective date of August 1, 1996.

KNI states that copies of the filing has been served upon each person designed on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this 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 appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21250 Filed 8–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–337–000]

Pacific Gas Transmission Co.; Notice of Proposed Change in FERC Gas Tariff

August 15, 1996.

Take notice that on August 12, 1996, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Twelfth Revised Sheet No. 4 and Fourth Revised Sheet No. 4A, to become effective August 15, 1996.

PGT asserts that the purpose of this filing is to terminate collection of its Gas Supply Restructuring Surcharge.

PGT states that a copy of this filing has been served upon all jurisdictional customers and upon interest state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20424, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21248 Filed 8–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–339–000]

Pacific Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 15, 1996.

Take notice that on August 13, 1996, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A:

Title Sheet

Second Revised Sheet No. 2
Third Revised Sheet No. 3
First Revised Sheet Nos. 6B, 6D, 6E and 7
Seventh Revised Sheet No. 51
First Revised Sheet No. 53
Second Revised Sheet Nos. 54, 55, 57 and 68
Third Revised Sheet No. 71
Second Revised Sheet Nos. 72 and 81
Original Sheet No. 81.01
Second Revised Sheet Nos. 81C and 88
First Revised Sheet No. 89
Second Revised Sheet No. 91
First Revised Sheet Nos. 93 and 109
Second Revised Sheet No. 127
First Revised Sheet No. 128
Second Revised Sheet Nos. 129 and 132
First Revised Sheet Nos. 133–135 and 139
Second Revised Volume No. 1:

Title Sheet

Fourth Revised Sheet No. 3

PGT requested the above-referenced tariff sheets become effective September 13, 1996.

PGT asserts that the purpose of this filing is to conform with Order Nos. 582 and 582–A, issued September 28, 1995 and February 29, 1996, respectively, in Docket Nos. RM95–3–000, *et al.* to bring PGT's FERC Gas Tariff into compliance with the Commission's revised regulations, and to update the tariff with a variety of non-substantive changes, such as removal of outdated provisions and clarifications reflecting PGT's current practices and Commission policies. PGT further states the proposed changes will not affect PGT's costs, rates or revenues, and that a copy of this filing has been served on PGT's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21255 Filed 8–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–338–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 15, 1996.

Take notice that on August 12, 1996, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to become effective September 12, 1996:

First Revised Sheet No. 602
First Revised Sheet No. 604
First Revised Sheet No. 605
Original Sheet No. 606
Original Sheet No. 607
Original Sheet Nos. 608–615

Texas Eastern states that the purpose of the filing is to modify Section 14.9 and add a new Section 14.10 in the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1, to implement new procedures to clarify allocation and use of firm delivery point and receipt point capacity. Specifically, Texas Eastern seeks to (1) implement a ''use it or reduce it'' provision with respect to firm receipt and delivery point capacity subscribed to under Section 14.9 of the General Terms and Conditions of its FERC Gas Tariff that is unutilized or under-utilized, and (2) provide for a first-come, first-served allocation to other customers requesting that capacity.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest 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 Sections 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21254 Filed 8–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG96–86–000]

Windpower Partners 1994, L.P.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

August 15, 1996.

On August 12, 1996, Windpower Partners 1993, L.P., c/o Kenetech Windpower, Inc., 500 Sansome Street, Suite 300, San Francisco, CA 94111, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The applicant owns and operates an eligible facility located in Culberson County, Texas, of approximately 35 MW capacity. The applicant's eligible facility consists of a wind-powered electric generation system.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 3, 1996, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21266 Filed 8–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG96–85–000]

Windpower Partners 1993, L.P.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

August 15, 1996.

On August 12, 1996, Windpower Partners 1993, L.P., c/o Kenetech Windpower, Inc., 500 Sansome Street, Suite 300, San Francisco, CA 94111, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The applicant owns and operates eligible facilities located near Buffalo Ridge, Minnesota and Palm Springs, California, of approximately 25 MW and 34.5 MW capacity, respectively. The applicant's eligible facilities consist of wind-powered electric generation systems and interconnecting transmission facilities.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the applicant. All such motions and comments should be filed on or before September 3, 1996, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21267 Filed 8–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1853–001, et al.]

Louisville Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

August 14, 1996.

Take notice that the following filings have been made with the Commission:

1. Louisville Gas and Electric Company

[Docket No. ER96–1853–001]

Take notice that on August 8, 1996, Louisville Gas and Electric Company tendered for filing its refund report in the above-referenced docket.

Comment date: August 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Louis Dreyfus Electric Power Inc., Direct Electric Inc., Equitable Power Services Co., Engelhard Power Marketing, Inc., TransCanada Power Corp., Wicor Energy Services, Inc., Energy Transfer Group, L.L.C.

[Docket No. ER92–850–017, Docket No. ER94–1161–009, Docket No. ER94–1539–010, Docket No. ER94–1690–009, Docket No. ER95–692–005, Docket No. ER96–34–003, Docket No. ER96–280–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On August 5, 1996, Louis Dreyfus Electric Power Inc. filed certain information as required by the Commission's December 2, 1992, order in Docket No. ER92–850–000.

On August 6, 1996, Direct Electric Inc. filed certain information as required by the Commission's July 18, 1994, order in Docket No. ER94–1161–000.

On August 5, 1996, Equitable Power Services Company filed certain information as required by the Commission's September 8, 1994, order in Docket No. ER94–1539–000.

On August 5, 1996, Engelhard Power Marketing, Inc. filed certain information as required by the Commission's December 29, 1994, order in Docket No. ER94–1690–000.

On July 31, 1996, TransCanada Power Corp. filed certain information as required by the Commission's June 9, 1995, order in Docket No. ER95–692–000.

On July 31, 1996, Wicor Energy Services, Inc. filed certain information as required by the Commission's November 9, 1995, order in Docket No. ER96–34–000.

On August 5, 1996, Energy Transfer Group, L.L.C. filed certain information as required by the Commission's January 29, 1996, order in Docket No. ER96–280–000.

2a. Intercoast Power Marketing Co., Midcon Power Services Corp., JEB Corporation, Phibro Inc., Amoco Energy Trading Corporation, USGEN Power Services, L.P., Utility Management Corporation

[Docket No. ER94–6–004, Docket No. ER94–1329–008, Docket No. ER94–1432–008, Docket No. ER95–430–006, Docket No. ER95–1359–004, Docket No. ER95–1625–004, Docket No. ER96–1144–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On July 31, 1996, Intercoast Power Marketing Company filed certain information as required by the Commission's August 19, 1994, order in Docket No. ER94–6–000.

On July 30, 1996, Midcon Power Services Corp. filed certain information as required by the Commission's August 11, 1994, order in Docket No. ER94–1329–000.

On July 30, 1996, JEB Corporation filed certain information as required by the Commission's September 8, 1994, order in Docket No. ER94–1432–000.

On July 31, 1996, Phibro Inc. filed certain information as required by the Commission's June 9, 1995, order in Docket No. ER95–430–000.

On August 5, 1996, Amoco Energy Trading Corporation filed certain information as required by the Commission's November 29, 1995, order in Docket No. ER95–1359–000.

On July 31, 1996, USGEN Power Services, L.P. filed certain information as required by the Commission's December 13, 1995, order in Docket No. ER95–1625–000.

On July 30, 1996, Utility Management Corporation filed certain information as required by the Commission's April 5, 1996, order in Docket No. ER96–1144–000.

3. Enron Power Marketing, Inc., Electric Clearinghouse, Inc., Morgan Stanley Capital Group Inc., Stand Energy Corporation, Westcoast Power Marketing Inc.

[Docket No. ER94–24–014, Docket No. ER94–968–014, Docket No. ER94–1384–011, Docket No. ER95–362–006, Docket No. ER95–378–005 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On August 1, 1996, Enron Power Marketing, Inc. filed certain information as required by the Commission's December 12, 1993, order in Docket No. ER94–24–000.

On August 1, 1996, Electric Clearinghouse, Inc. filed certain information as required by the Commission's April 7, 1994, order in Docket No. ER94–968–000.

On July 31, 1996, Morgan Stanley Capital Group Inc. filed certain information as required by the Commission's November 8, 1994, order in Docket No. ER94–1384–000.

On August 1, 1996, Stand Energy Corporation filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER95–362–000.

On July 29, 1996, Westcoast Power Marketing Inc. filed certain information as required by the Commission's April 20, 1995, order in Docket No. ER95–378–000.

4. AES Power Inc., Lambda Energy Marketing Co., J. Aron & Company, National Power Management Co., Superior Electric Power Corp., Gateway Energy Marketing, Energy Choice L.L.C.

[Docket No. ER94–890–010, Docket No. ER94–1672–006, Docket No. ER95–34–008, Docket No. ER95–192–007, Docket No. ER95–1747–003, Docket No. ER96–795–001, Docket No. ER96–827–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On August 6, 1996, AES Power Inc. filed certain information required by the Commission's April 8, 1994, order in Docket No. ER94–890–000.

On July 15, 1996, Lambda Energy Marketing Company filed certain information required by the Commission's December 14, 1994, order in Docket No. ER94–1672–000.

On July 17, 1996, J. Aron & Company filed certain information required by the Commission's March 1, 1995, order in Docket No. ER95–34–000.

On August 7, 1996, National Power Management Company filed certain information required by the Commission's January 4, 1995, order in Docket No. ER95–192–000.

On August 5, 1996, Superior Electric Power Corporation filed certain information required by the Commission's October 23, 1995, order in Docket No. ER95–1747–000.

On August 6, 1996, Gateway Energy Marketing filed certain information required by the Commission's March 7, 1996, order in Docket No. ER96–795–000.

On August 7, 1996, Energy Choice, L.L.C. filed certain information required by the Commission's March 21, 1996, order in Docket No. ER96–827–000.

5. LG&E Power Marketing Inc., American Power Exchange, Inc., Power Source L.L.C., Energy Services Inc., Vantus Power Services, U.S. Power & Light, Inc., Alliance Power Marketing, Inc.

[Docket No. ER94–1188–012, Docket No. ER94–1578–007, Docket No. ER95–74–006, Docket No. ER95–1021–004, Docket No. ER95–1614–006, Docket No. ER96–105–003, Docket No. ER96–1818–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On August 2, 1996, LG&E Power Marketing Inc. filed certain information as required by the Commission's August 19, 1994, order in Docket No. ER94–1188–000.

On August 1, 1996, American Power Exchange, Inc. filed certain information as required by the Commission's October 19, 1994, order in Docket No. ER94–1578–000.

On August 2, 1996, Power Source L.L.C. filed certain information as required by the Commission's January 4, 1995, order in Docket No. ER95–74–000.

On August 7, 1996, Energy Services Inc. filed certain information as required by the Commission's June 13, 1995, order in Docket No. ER95–1021–000.

On July 30, 1996, Vantus Power Services filed certain information as required by the Commission's October 20, 1995, order in Docket No. ER95–1614–000.

On August 5, 1996, U.S. Power & Light, Inc. filed certain information as required by the Commission's December 6, 1995, order in Docket No. ER96–105–000.

On July 31, 1996, Alliance Power Marketing, Inc. filed certain information as required by the Commission's June 17, 1996, order in Docket No. ER96–1818–000.

6. Central Hudson Gas & Electric Corporation

[Docket Nos. ER96–2093–000, ER96–2094–000, ER96–2151–000]

Take notice that on August 5, 1996, Central Hudson Gas & Electric Corporation tendered for filing an amendment in the above-referenced dockets.

Comment date: August 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Northwest Generating Cooperative

[Docket No. ES96–38–000]

Take notice that on August 12, 1996, Pacific Northwest Generating Cooperative (PNGC) filed an application, under § 204 of the Federal Power Act, seeking authorizations:

(1) to issue a promissory note in an aggregate principal amount of $8 million with the National Rural Utilities Cooperative Finance Corporation (CFC) having a maturity of five years; and

(2) to enter into a letter of credit agreement in an aggregate principal amount of $1 million with CFC.

Also, PNGC requests an exemption from the Commission's competitive bidding or negotiated placement requirements.

Comment date: August 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Keys Electric Cooperative Association, Inc.

[Docket No. OA96–220–000]

Take notice that on August 6, 1996, Florida Keys Electric Cooperative Association, Inc. tendered for filing an Application for Waiver of Reciprocity Requirement, in accordance with Section 35.28(e)(2) of the Rules of the Federal Energy Regulatory Commission (Commission), 18 CFR 35.28(e)(2), or in the Alternative, Application for Waiver of Requirements of Order Nos. 888 and 889, in accordance with Section 35.28(d) of the Rules of the Commission, 18 CFR 35.28(d), as more fully set forth in the Application.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 96–21269 Filed 8–20–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–178–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Meeting

August 15, 1996.

On August 27, 1996, the Commission's staff will meet, at the request of the U.S. Congressional Delegation from New Hampshire (Congressional Delegation), with the Congressional Delegation officials, of the Town of Salem, New Hampshire, and other interested community leaders, to provide information about:

- the environmental impact statement process required by the National Environmental Policy Act of 1969; and
- the environmental aspects of the proposed Maritimes and Northeast Phase I Pipeline Project.

The meeting will occur at 7:00 PM, at Salem High School, 44 Geremonty Drive, Salem, New Hampshire.

Lois D. Cashell,
Secretary.

[FR Doc. 96–21253 Filed 8–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2016–022]

City of Tacoma, Washington; Notice of Availability of Draft Environmental Assessment

August 15, 1996.

A draft environmental assessment (DEA) is available for public review. The DEA was prepared for an application filed by the City of Tacoma, Washington, licensee for the Cowlitz River Hydroelectric Project. In its application, the licensee requests Commission approval of a settlement agreement among the licensee, the U.S. Fish and Wildlife Service, and the Washington Department of Fish and Wildlife (the Parties). The agreement creates a 14,000-acre wildlife management area. The Parties wish to include the agreement in the project license. The Cowlitz River Project is located on the Cowlitz River, near the City of Tacoma, in Lewis County, Washington.

The DEA finds that approving the settlement agreement is not a major federal action significantly affecting the quality of the human environment. The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be obtained by calling the Commission's public reference room at (202) 208–1371.

Comments on the DEA must be filed with the Commission within 30 days from the date of this notice. Comments should be addressed to: Ms. Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (2016–022) on any comments filed.

Lois D. Cashell,
Secretary.

[FR Doc. 96–21251 Filed 8–20–96; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

August 15, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Types of Applications: Transfer of Licenses.

b. Project Numbers: P–2019 and P–2699.

c. Applicants: Calaveras County Water District Utica Power Authority.

d. Name of Projects: Utica and Angels.

e. Locations: Utica: On the North Fork Stanislaus River and other water bodies in Calaveras and Tuolumne Counties, California; Angels: On Angels Creek in Calaveras County, California.

f. Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. Applicant Contacts: Mr. Bill Becker, General Manager, Calaveras County Water District, P.O. Box 846, San Andreas, CA 95249, (209) 754–3543; Mr. Duane Oneto, Chairman, Board of Directors, Utica Power Authority, P.O. Box 846, San Andreas, CA 95249, (209) 728–3641.

h. FERC Contact: Dean C. Wight, (202) 219–2675.

i. Comment Date: September 10, 1996.

j. Description of Proposed Action: Calaveras County Water District (CCWD) proposes to transfer the licenses for both projects from CCWD to the Utica Power Authority, which is a joint authority consisting of CCWD, the City of Angels, California, and the Union Public Utility District. The UPA members state that they desire to jointly hold the licenses to ''help assure that there will be adequate water available from the Projects for the protection of all beneficial public uses in Calaveras County, including for power production, domestic water supply, recreation, aesthetics and fish and wildlife purposes.''

k. This notice also consists of the following standard paragraphs: B, C2, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21252 Filed 8–20–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5558–2]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Daylight Time. Due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office.

1. Risk Reduction Options Subcommittee of the Integrated Risk Project

The Risk Reduction Options Subcommittee (RROS) of the Science Advisory Board's (SAB) Integrated Risk Project will meet Wednesday and Thursday, September 11–12, 1996. On Wednesday, the meeting will be held in the Administrator's Conference Room (1145 West Tower). On Thursday, the meeting will be held in Conference Room 2 South (in the southeast—''Safeway''—corner of the ground floor of Waterside Mall). Both meeting rooms are at EPA's Headquarters at Waterside Mall, 401 M Street, SW., Washington, DC.

Purpose of the Meeting

The main purpose of the meeting is to continue work begun at the Subcommittee's first meeting, June 26–27, 1996, which was announced in the June 11, 1996 Federal Register, at 61, FR 29561. At the June meeting, the Subcommittee heard presentations on seven risk reduction options: engineering, communication and education, enforcement, market incentives, regulation, international and intergovernmental cooperation, and environmental management systems. The Subcommittee discussed ranking, metrics, and optimization and formed subgroups on stressors, location, and media to gather relevant input, assemble option packages, and select likely options for optimizing. This effort will prepare the subgroups to test a proposed methodology for optimizing risk reduction options and report to the full Subcommittee on September 11 or 12. The public meeting on September 11th may be postponed or interrupted as necessary to allow the stressor, location, and media subgroups to complete their work. The September 12th meeting will be a public meeting all day, beginning at 8:30 and ending no later than 5:00. The Subcommittee will determine whether this work is sufficient to form the basis for a subsequent written report or whether additional work is needed.

Availability of Review Materials

There are no review documents for this effort. Neither the Subcommittee nor the subgroups have produced any documents for cicrulation to the public in advance of the meeting.

For Further Information

Agendas and rosters can be obtained from the Subcommitteee Secretary, Mrs. Dorothy Clark, Tel. (202) 260–6552, Fax (202) 260–7118, or via the internet at: clark.dorothy@epamail.epa.gov. Members of the public desiring other information about the meeting may contact Mrs. Kathleen Conway, Designated Federal Official, Environmental Engineering Committee, Science Advisory Board (1400F), U.S. EPA, 401 M Street, SW., Washington, DC 20460; telephone/voice mail at (202) 260–2558; fax at (202) 260–7118; or via the internet at: conway.kathleen@epamail.epa.gov.

Members of the public who wish to make a brief oral presentation to the Subcommittee *must* contact Mrs. Conway *in writing* (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Wednesday September 4, 1996 in order to be included on the agenda. Public comments will be limited to five minutes per speaker or organization. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc.), and at least 35 copies of an outline of the issues to be addressed.

2. Environmental Engineering Committee (EEC)

The Environmental Engineering Committee (EEC) of the Science Advisory Board (SAB) will meet Wednesday through Friday, September 25–27, 1996, at the National Risk Management Research Laboratory, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268, tel. (513) 569–7418. The meeting will begin at 8:30 a.m. September 25 and end no later than 3:00 p.m. on September 27.

Purpose of the Meeting

At this meeting, the Committee will conduct a review, hold a consultation, hear the report of the SITE Subcommittee, and consider potential FY96 activities.

The Office of Research and Development (ORD) has asked the Committee to review the strategic directions and approach to research of the National Risk Management Research Laboratory (NRMRL) in the context of both the 1995 realignment of ORD's organizational structure, which used risk assessment and risk management as organizing principles for a nationwide laboratory system and the Strategic Plan for the Office of Research and Development (EPA, 1996). The Strategic Plan describes the relationship of risk assessment to the risk management process and highlights the need for scientific and engineering research to enable sound risk management decisions and actions. NRMRL's mission is to conduct research to reduce uncertainties and costs associated with making and implementing environmental risk management decisions. An abbreviated form of the current draft charge for this review follows.

1. Examine and critique the research programmatic directions being taken by NRMRL.
2. Review and comment on NRMRL's strategic directions as a research laboratory organization.
3. Review and comment on the effectiveness of NRMRL's approach to science management.
4. Examine and critique the relationship of NRMRL's risk management research to the intended role of risk management in the risk assessment/risk management paradigm.
5. Review and comment on the strategic balance needed in NRMRL for the next decade among pollution prevention, technology development, remediation, and risk management assessment activities.

The EEC will provide a consultation to the Office of Solid Waste (OSW) on a proposed surface impoundment study. The OSW is also soliciting public comments on the study through an announcement entitled ''Land Disposal Program Flexibility Act of 1996—Surface Impoundment Study'' in the July 25, 1996 Federal Register, Vol. 61, No. 144, pages 38684–38687. An SAB consultation is a public encounter between the SAB and the Agency early in the process, before the Agency has commited itself to a position. The intent of a consultation is to leaven the Agency's thinking by amassing an eclectic collection of ideas about how the Agency might proceed on a particularly vexing problem. The product of a consultation is a very short letter to the Administrator, simply alerting him/her to the fact that the members of an SAB panel had met with the Agency to discuss the issue. There will be no ''report'' per se.

The SITE Subcommittee will report to the EEC on its review of the technical aspects of how EPA's Superfund Innovative Technology Evaluation (SITE) program is carried out.

For Further Information

A draft meeting agenda and a Committee roster can be obtained from Mrs. Dorothy Clark, as described above for the RROS meeting. Other information can be obtained from Mrs. Kathleen Conway, as described above. Members of the public who wish to make a brief oral presentation to the Committee must contact Mrs. Conway in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Thursday, September 22, 1996 in order to be included on the Agenda. Except for this date, the requirements for public comments are the same as those for the RROS meeting, described above.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: August 9, 1996.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 96–21283 Filed 8–20–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–66230; FRL 5390–6]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by November 19, 1996 orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the Federal Register before acting on the request.

II. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 43 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000241—00218	Cygon SC-9 Systemic Insecticide	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl)phosphorodithioate

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000241—00355	Funginex Fungicide	*N,N'*-(1,4-Piperazinediylbis(2,2,2-trichloroethylidine)bis(formamide)
000400 IL—94—0002	Omite 6E	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 MS—94—0006	Dimilin - 2F	1-(4-Chlorophenyl)-3-(2,6-difluorobenzoyl)urea
000499—00156	Whitmire PT 260 Diazinon	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
000499—00342	P/P Outdoor Fogger with Repellent	2-Hydroxyethyl octyl sulfide (5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
000769—00789	Superior Pelletox B-X Grade Contains 5% Baytex	*O,O*-Dimethyl *O*-(4-(methylthio)-*m*-tolyl)phosphorothioate
000769—00794	TEX-2	*O,O*-Dimethyl *O*-(4-(methylthio)-*m*-tolyl)phosphorothioate
000769—00813	Superior SCP 1382-5 Synthetic Pyrethroid	Aliphatic petroleum hydrocarbons (5-Benzyl-3-furyl)methyl2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
000769—00819	Superior TEX 4	*O,O*-Dimethyl *O*-(4-(methylthio)-*m*-tolyl)phosphorothioate
001421—00090	Super Diazinon Spray	*N*-Octyl bicycloheptene dicarboximide *O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
002382—00068	D-F-T- Spray	Butoxypolypropylene glycol 1-Naphthyl-*N*-methylcarbamate
002382—00075	D-F-T- Spray Plus	Butoxypolypropylene glycol 1-Naphthyl-*N*-methylcarbamate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
002517—00031	Sergeant's Flea and Tick Powder	1-Naphthyl-*N*-methylcarbamate
002517—00036	Sergeant's Pump Cat Flea & Tick Spray	1-Naphthyl-*N*-methylcarbamate
002935 ID—76—0009	Red-Top Ben-Sul 85	Sulfur
003125 CT—95—0001	Tempo 2 Lawn and Ornamental Insecticide	Cyano (4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-
003125 FL—82—0046	Bolstar 6 Emulsifiable Insecticide	Xylene range aromatic solvent *O*-Ethyl*O*-(4-(methylthio)phenyl) *S*-propylphosphorodithioate
003125 ME—79—0006	Guthion 2S	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
003125 VT—95—0001	Tempo 2 Lawn and Ornamental Insecticide	Cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-
003282—00017	D-Con Double Power Roach & Ant Spray	2-Hydroxyethyl octyl sulfide *N*-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
003282—00025	D-Con Stay Away Outdoor Fogger	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl *d-trans*-2,2-dimethyl- Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) 2-Hydroxyethyl octyl sulfide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
003282—00068	D-Con Double Power Formula II	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl *d-trans*-2,2-dimethyl- 2-Hydroxyethyl octyl sulfide *N*-Octyl bicycloheptene dicarboximide
004808—00003	Additive SO Metalworking Fluid Fungicide	1-Hydroxy-2-(1*H*)-pyridinethione, sodium salt
004822—00056	Raid Yard Guard Outdoor Fogger	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) 2-Hydroxyethyl octyl sulfide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
004822—00082	Stampede Outdoor Fogger	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) 2-Hydroxyethyl octyl sulfide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
004822—00099	Raid Yard Guard Outdoor Fogger	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl *d-trans*-2,2-dimethyl- 2-Hydroxyethyl octyl sulfide (5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
004822—00161	Raid Yard Guard Outdoor Fogger Formula II	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl *d-trans*-2,2-dimethyl- 2-Hydroxyethyl octyl sulfide (5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
004822—00184	Raid Yard Guard Outdoor Fogger III	*d-cis-trans*-Allethrin 2-Hydroxyethyl octyl sulfide (3-Phenoxyphenyl)methyl *d*-cis and trans* 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
004822—00185	Raid Yard Guard Outdoor Fogger IV	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl *d-trans*-2,2-dimethyl- 2-Hydroxyethyl octyl sulfide (3-Phenoxyphenyl)methyl *d*-cis and trans*2,2-dimethyl-3-(2-methylpropenyl)cyclopro
008590—00667	Agway Green Lawn Fertilizer with Team	Trifluralin (α,α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine) (Note: a = alpha) *N*-Butyl-*N*-ethyl- α,α,α-trifluoro-2,6-dinitro-*p*-toluidine (Note: a = alpha)
010370—00271	CSA Liquid Dog and Cat Repellent	Methyl nonyl ketone
010404—00007	Lesco 12–4–8 Weed & Feed for Lawn Weed Control	Dimethylamine 2,4-dichlorophenoxyacetate Diethanolamine 2-(2-methyl-4-chlorophenoxy)propionate
010942—00005	Bandini Insect Control Plus Lawn Fertilizer 12–3–6	1-Naphthyl-*N*-methylcarbamate
011715—00010	Speer Flea & Tick Spray	1-Naphthyl-*N*-methylcarbamate *N*-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
011715—00152	Pet Guard Flea and Tick Spray for Dogs and Cats	1-Naphthyl-*N*-methylcarbamate *N*-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
056228 KY—89—0003	Compound DRC-1339 98% Concentrate	3-Chloro-*p*-toluidine hydrochloride
062719—00007	Dursban 2EC	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate
062719—00168	Suspend 30W	(*S*-(*R**,R*))-4-Chloro-alpha-(1-methylethyl)benzeneacetic acid,
066676 ND—94—0006	Tree Guard	Benzyl diethyl ((2,6-xylylcarbamoyl)methyl) ammonium benzoate
067250—00008	Selibate PBW Bands	(*Z,E*)-7,11-Hexadecadien-1-yl acetate
068688—00043	Rsr Carbaryl Shampoo	1-Naphthyl-*N*-methylcarbamate

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000241	American Cyanamid Co., Agri Research Div - U.S. Regulatory Affairs, Box 400, Princeton, NJ 08543.
000400	Uniroyal Chemical Co Inc., 74 Amity Rd, Bethany, CT 06524.
000499	Whitmire Micro-Gen Research Laboratories Inc., 3568 Tree Ct Industrial Blvd, St Louis, MO 63122.
000769	SureCo Inc., 10012 N. Dale Mabry, Suite 221, Tampa, FL 33618.
001421	Dettelbach Chemical Co, Division of Hysan Corp., 3000 W. 139th St, Blue Island, IL 60406.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
002382	Virbac Inc., Box 162059, Fort Worth, TX 76161.
002517	Conagra Pet Products, 2258 Darbytown Rd., Richmond, VA 23231.
002935	Wilbur Ellis Co., 191 W. Shaw Ave, Fresno, CA 93704.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
003282	Reckitt & Colman Inc., Household Products Division, Attn: EPA Regulatory Dept, 225 Summitt Ave, Montvale, NJ 07645.
004808	Cincinnati Milacron, Box 9013, Cincinnati, OH 45209.
004822	S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403.
008590	Agway Inc., c/o Universal Cooperatives Inc., Box 460, Minneapolis, MN 55440.
010370	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
010404	Lesco Inc., 20005 Lake Rd., Rocky River, OH 44116.
010942	Bandini Fertilizer Co., 4139 Bandini Blvd, Los Angeles, CA 90023.
011715	Speer Products Inc., Box 18993, Memphis, TN 38181.
056228	U.S. Department of Agriculture, Animal & Plant Health Inspection Service, 4700 River Rd., Unit 150, Riverdale, MD 20737.
062719	DowElanco, 9330 Zionsville Rd., 308/3E, Indianapolis, IN 46268.
066676	Nortech Forest Products Inc., 7600 W. 27th St., Suite B11, St Louis Park, MN 55426.
067250	Biosys, 10150 Old Columbia Rd., Columbia, MD 21046.
068688	Speer Products Inc., Box 18993, Memphis, TN 38118.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before November 19, 1996. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in Federal Register (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: August 7, 1996.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 96–21288 Filed 8–20–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–340101; FRL 5390–1]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on November 19, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further

provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the Federal Register. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 17 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before November 19, 1996 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete from Label
000070–00227	Rigo's Best Dipel Dust	Bacillus thuringiensis subsp. kurstaki	Tobacco, safflower, sugar beets, cotton
000100–00473	Evik 80W Herbicide	Ametryn	Sweet corn
000228–00105	Methoxychlor Emulsifiable Concentrate	Methoxychlor	Beaches, cranberries, grain storage bins, public parks, standing water, overlarge land areas, aerial applications
000239–02421	ORTHO Outdoor Insect Fogger	2-Hydroxyethyl Octyl sulfide; Resmethrin	Picnic areas
000499–00450	ULD BP–300 Insecticide	*N*-Octyl bicycloheptene dicarboximide; Piperonyl butoxide; Pyrethrins	Mushroom houses, mushroom production
000499–00452	ULD BP-100 Insecticide	*N*-Octyl bicycloheptene dicarboximide; Piperonyl butoxide; Pyrethrins	Mushroom houses, mushroom production
000499–00453	ULD BP–50 Insecticide	Piperonyl butoxide; Pyrethrins	Mushroom houses, mushroom production
000499–00458	ULD BP–5025 Insecticide	Piperonyl butoxide; production Pyrethrins	Mushroom houses, mushroom
002217–00383	Sevin Dust 5%	Carbaryl	Use on pets
002217–00572	Gordon's Sevin Dust - A Multipurpose Insecticide	Carbaryl	Use on pets
003125–00404	DYLOX Technical Insecticide	Trichlorfon	Livestock use
005440–00117	Cardinal Food Plant Concentrated Foggin Insecticide	Piperonyl butoxide	Mushroom production & processing
008660–00068	Ferbam Fungicide	Ferbam	Apricot, blueberries, currant, dates, gooseberries, plums prunes, quince
034704–00157	Sevin 10 Dust	Carbaryl	Pet uses
034704–00525	5% Sevin Insect Dust	Carbaryl	Pet uses
033955–00462	Acme Sevic 5% Dura Dust	Carbaryl	Pet uses
051036–00129	Malathion Tech	Malathion	Ornamental lawns and turf, outdoor domestic dwellings, wide area and general outdoor treatment for flying insects, around commercial and industrial buildings, around agricultural buildings

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000070	Wilbur-Ellis Co., P.O. Box 16458, Fresno, CA 93755.
000100	Ciba Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419.
000228	Riverdale Chemical Co., 425 West 194th Street, Glenwood, IL 60425.
000239	The SOLARIS Group of Monsanto Co., P.O. Box 5006, San Ramon, CA 94583.
000499	Whitmire Micro-Gen Research Laboratories Inc., 3568 Tree Ct Industrial Blvd., St. Louis, MO 63122.
002217	PBI/Gordon Corp. c/o James Armbruster, P.O. Box 014090, Kansas City, MO 64101.
003125	Bayer Corporation, P.O. Box 4913, 8400 Hawthorn Rd., Kansas City, MO 64120.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Company No.	Company Name and Address
005440	Cardinal Chemical Co., 1233 E. Beamer Street, Suite G, Woodland, CA 95776.
008660	Pursell Industries, Inc., P.O. Box 450, Sylacauga, AL 35150.
033955	PBI/Gordon Corp. c/o James Armbruster, P.O. Box 014090, Kansas City, MO 64101.
034704	Platte Chemnical Co., P.O. Box 667, Greeley, CO 80632.
051036	Micro Flo Co., P.O. Box 5948, Lakeland, FL 33807.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: August 1, 1996.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 96–21168 Filed 8–20–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5554–4]

Proposed De Minimis Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, Bonifield Brothers Superfund Site, St. Louis, Missouri

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed *de minimis* settlement under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, Bonifield Brothers Superfund Site, St. Louis, Missouri.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into a *de minimis* administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(g). This settlement is intended to resolve the potential liability of 3529 Hickory, Inc. and Gateway Airgas, Inc. for the response costs incurred in connection with the Bonifield Brothers Superfund Site, St. Louis, Missouri (the ''Site'').

DATES: Written comments must be provided on or before September 20, 1996.

ADDRESSES: Comments should be addressed to the Regional Administrator, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: In the Matter of the Bonifield Brothers Site, St. Louis, Missouri, EPA Docket No. 96–F–0024.

FOR FURTHER INFORMATION CONTACT: J. Scott Pemberton, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7276.

SUPPLEMENTARY INFORMATION: The proposed settling parties are 3529 Hickory, Inc., the current owner of the property that constitutes the Bonifield Brothers Dioxin Site located at 3529 Hickory Street, St. Louis, Missouri, and Gateway Airgas, Inc., a successor corporation to the Acetylene Gas Company (AGC). Sometime during the period from 1971 to 1973, the Site was sprayed for dust control with waste oil contaminated with 2,3,7,8 tetrachlorodibenzo-p-dioxin (''dioxin''), when it was owned and operated by Bonifield Brothers Company as a truck terminal. In April 1976, AGC acquired the Site property from the Bonifield Brothers Company for use as a manufacturing and storage facility as part of its gas operation. Based upon current information, AGC purchased the property without knowledge that it was contaminated with dioxin. On January 16, 1996, the sole owners of the stock of AGC formed 3529 Hickory, Inc., a wholly-owned subsidiary of AGC. On January 19, 1996, AGC transferred ownership of the Site property to 3529 Hickory, Inc., whose sole asset is the Site property. Also on January 19, 1996, AGC merged with and into Gateway Airgas, Inc., whereupon the corporate existence of AGC ceased.

AGC paved the Site property with asphalt in 1977. AGC utilized the Site property until 1982 when it became aware of the dioxin contamination. Since 1982, the property has been used only for parking and heliport purposes.

Analytical results from sampling at the Site by the City of St. Louis on April of 1984 revealed dioxin contamination ranging from 12.9 parts per billion (ppb) to 55.8 ppb. Analytical results from samples collected in May 1990 revealed wide variations in dioxin concentrations, up to 1445 ppb.

On September 20, 1995, the Regional Administrator, EPA Region VII, issued an Action Memorandum approving a removal action at the Site. Following the excavation of the asphalt cap and gravel layer, the Site soils were sampled. All soils contaminated above 1 ppb were excavated and transported to Times Beach, Missouri for incineration. Excavation and transportation of contaminated soils from the Site was completed on December 20, 1995.

The proposed settlement provides access to 3529 Hickory, Inc.'s property to EPA, its employees or any other duly authorized representatives to enter and perform environmental response actions upon the property pursuant to the provisions of CERCLA Section 104. In addition, 3529 Hickory, Inc. has agreed to require any lessee or transferee of its property, as a term of any sale, lease or other transfer, to grant access as set forth above.

The proposed settlement involves no financial terms; the proposed settling parties are required only to provide access. The proposed *de minimis* settlement provides that EPA will covenant not to sue 3529 Hickory, Inc. and Gateway Airgas, Inc. for response costs at the Site or for injunctive relief pursuant to Sections 106 and 107 of CERCLA and Section 7003 of the Resource Conservation and Recovery Act of 1980, as amended (RCRA), 42 U.S.C. 6973. The proposed settlement contains a reopener clause which nullifies the covenant not to sue if any information becomes known to EPA that indicates that 3529 Hickory, Inc. or Gateway Airgas, Inc. (1) conducted or

permitted the generation, transportation, storage, treatment or disposal of any hazardous substance at the Site; (2) contributed to a release or threat of release of a hazardous substance at the Site through any act or omission; or (3) that 3529 Hickory, Inc. or Gateway Airgas, Inc. no longer meet the criteria for a *de minimis* settlement set forth in Section 122(g)(1)(B) of CERCLA, 42 U.S.C. 9622(g)(1)(B).

Delores Platt,

Acting Regional Administrator.

[FR Doc. 96–21282 Filed 8–20–96; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1129–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA–1129–DR), dated July 25, 1996, and related determinations.

EFFECTIVE DATE: August 8, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 7, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–21290 Filed 8–20–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1128–DR]

Michigan; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Michigan (FEMA–1128–DR), dated July 23, 1996, and related determinations.

EFFECTIVE DATE: July 23, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alma Armstrong of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of James Duncan as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–21293 Filed 8–20–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1116–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1116–DR) dated June 1, 1996, and related determinations.

EFFECTIVE DATE: August 8, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 1, 1996:

The counties of Blue Earth, Chisago, Dakota, Faribault, Freeborn, Lake of the Woods, Nicollet, Steele, Wabasha, Waseca and Washington for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–21291 Filed 8–20–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1116–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1116–DR), dated June 1, 1996, and related determinations.

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 5, 1996, the President amended the major disaster declaration of June 1, 1996, under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Minnesota, resulting from flooding on March 14 through June 1, 1996 is of sufficient severity and magnitude to warrant the expansion of the incident type to include severe storms and the incident period to be March 14 through June 17 in the major disaster declaration of June 1, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act'').

All other conditions specified in the original declaration remain the same.

Please notify the Governor of the State of Minnesota and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–21298 Filed 8–20–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1127–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1127–DR), dated July 18, 1996, and related determinations.

EFFECTIVE DATE: August 12, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn C. Woodard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Graham Nance as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 96–21294 Filed 8–20–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1130–DR]

Pennsylvania; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania, (FEMA–1130–DR), dated July 26, 1996 and related determinations.

EFFECTIVE DATE: August 12, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Pennsylvania, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 26, 1996:

Armstrong, Blair, Clearfield, Crawford, Greene, Venango Counties for Public Assistance (already designated for Individual Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–21292 Filed 8–20–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217–011551.

Title: Matson/OOCL Slot Charter Agreement.

Parties:

Matson Navigation Company, Inc. (''Matson'')

Orient Overseas Container Line, Inc. (''OOCL'')

Synopsis: The proposed Agreement permits OOCL to charter space on Matson's vessels in the trade from the ports of Oakland, California, Los Angeles, California, and Seattle, Washington to Busan, Republic of Korea.

Agreement No.: 232–011552.

Title: Colombia Express Space Charter and Sailing Agreement.

Parties:

Associated Transport Line, Inc.

Smith & Johnson Carriers Inc.

Synopsis: The proposed Agreement permits the parties to charter space to one another in the trade between U.S. Gulf Coast ports and points and ports and points in Colombia.

Dated: August 15, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–21241 Filed 8–20–96; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. § 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Disney Cruise Vacations, Inc. and Devonson Cruise Company, Limited, 210 Celebration Place, Celebration, Florida 34747

Vessels: DISNEY MAGIC and DISNEY WONDER

Dated: August 15, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–21239 Filed 8–20–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 10, 1996.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. William Peter Ahnert, Bushkill, Pennsylvania; to acquire 31 percent of the voting shares of Pocono Community Bank (in organization), Stroudsburg, Pennsylvania.

Board of Governors of the Federal Reserve System, August 15, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–21245 Filed 8–20–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company 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 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, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 13, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mercantile Bancorporation Inc., St. Louis, Missouri to acquire 100 percent of the voting shares of Today's Bancorp, Inc., Freeport, Illinois, and thereby indirectly acquire Today's Bank-East, Freeport, Illinois, and Today's Bank-West, Galena, Illinois; and Mercantile Bancorporation of Illinois, St. Louis, Missouri, a second-tier holding company subsidiary of Mercantile Bancorporation Inc., to merge with Today's Bancorp, Inc., Freeport, Illinois, and thereby indirectly acquire Today's Bank-East, Freeport, Illinois, and Today's Bank-West, Galena, Illinois.

In connection with this application Mercantile Bancorporation Inc., also has applied to acquire Today's Insurance Source Agency, Inc., East Dubuque, Illinois, and thereby engage in insurance agency activities, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 15, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board.

[FR Doc. 96–21244 Filed 8–20–96; 8:45 am]

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 September 4, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Commercial Corporation, Little Rock, Arkansas; to engage in the leasing of personal property, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 15, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–21246 Filed 8–20–96; 8:45 am]

BILLING CODE 6210–01–F

GOVERNMENT PRINTING OFFICE

The Federal Register Online Via GPO Access; Meeting and Demonstration

The United States Government Printing Office (GPO) will hold a meeting for Federal agencies, businesses, non-profit organizations and the public interested in an overview and demonstration of the Government Printing Office's online service, *GPO Access*, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

The demonstration will be held at the United States Government Printing Office, Carl Hayden Room, 8th Floor, 732 North Capitol Street NW., Washington, DC, on Tuesday, September 17, from 9 a.m. to 10:30 a.m. and 11 a.m. to 12:30 p.m. There is no charge to attend. GPO is accessible via the Metro from Union Station, using the Red Line.

The online Federal Register service offers access to the daily issues of the Federal Register by 6 a.m. on the day of publication at no charge to the user. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database. Documents are available as ASCII text files and in typeset form as Adobe Acrobat Portable Document Format (PDF) files. Graphics

are included in the PDF files and are also available as separate files in the TIFF format for the 1994 (Volume 59) Federal Register. The online Federal Register is available via the Internet via the World Wide Web (URL: http://www.access.gpo.gov/su__docs/aces/aces140.html), using WAIS client software or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through *GPO Access* include the *Government Manual; GILS Records; The Budget of the United States Government, Fiscal Year 1997; Congressional Record; Congressional Record Index,* including the *History of Bills; Congressional Bills; Public Laws; U.S. Code;* and *GAO Reports;* and a growing list of important Government documents available on the same day of publication.

Individuals interested in attending may reserve a space by contacting John R. Berger, Marketing Specialist, at the GPO's Office of Electronic Information Dissemination Services, by Internet e-mail at jberger@gpo.gov; by telephone: 202–512–1525; or by fax: 202–512–1262. Seating reservations will be accepted through Friday, September 13, 1996.

Michael F. DiMario,

Public Printer.

[FR Doc. 96–21235 Filed 8–20–96; 8:45 am]

BILLING CODE 1505–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Request for Public Comments Concerning the Implementation and Management of Child Welfare Training for Which Federal Financial Participation Is Available Under Title IV–E of the Social Security Act

AGENCY: Administration on Children, Youth and Families, Administration for Children and families, Department of Health and Human Services.

ACTION: Notice of request for public comment.

SUMMARY: The Children's Bureau, in the Administration on Children, Youth and Families administers the title IV–E training program which provides funds to States to assist with the training of public agency staff, foster and adoptive parents, and private agency staff. Federal financial participation (FFP) is available for a portion of the costs States incur in the delivery of appropriate and approved child welfare training. The Children's Bureau plans to issue guidance clarifying current policy and regulations with respect to title IV–E training. The relevant regulations are at 45 CFR 235.63–.66(a), and 45 CFR 1356.60 (b) and (c). This notice invites public comment on issues and concerns which have been identified in the course of implementing and managing title IV–E training. These comments will help to inform the Children's Bureau in clarifying the existing policy and regulatory framework within which title IV–E operates and is administered.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 21, 1996.

ADDRESSES: Mail written comments (preferably in duplicate) to Daniel H. Lewis, Deputy Associate Commissioner, Children's Bureau, P.O. Box 1182, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Daniel H. Lewis, Deputy Associated Commissioner, Children's Bureau, P.O. Box 1182, Washington, DC 20013; 202–205–8618.

SUPPLEMENTARY INFORMATION: With the enactment of Public Law 96–272, the Adoption Assistance and Child Welfare Act of 1980, the provisions for claiming Federal financial participation (FFP) in the costs of training under title IV–E were established. Over the past six years two policy documents have been developed by the Department to provide guidance on a number of title IV–E training issues. The issues which have been dealt with in these documents include: (1) clarification of the availability of Federal financial participation (FFP) for different types of training, certain categories of training recipients, and specific cost items based on interpretations of existing statutes and regulations; (2) differential treatment of direct and indirect costs for purposes of obtaining different levels of FFP; and (3) a restatement of the requirement for cost allocation in order to secure FFP.

Policy Announcement (PA) ACYF–90–01, dated June 14, 1990, explained the availability of 75 percent Federal financial participation (FFP), to the extent costs are allocable to title IV–E, for several types of training.

Information Memorandum ACF–IM–91–15, dated July 24, 1991, provided a background on the statutory and regulatory provisions providing for a 75 percent title IV–E training matching rate. It also reiterated the requirement to allocate training costs among all benefitting programs.

In addition to these policy documents, the DHHS Departmental Appeals Board (DAB) has dealt with several title IV–E training issues relating to the applicable rate of FFP and the requirement for cost allocation in its Decisions 1214, 1422, and 1530.

Numerous issues have arisen in response to policy interpretations contained in the policy documents and DAB decisions cited above. As a result, the Children's Bureau plans to issue guidance clarifying current policy and regulations for the benefit of all parties who deal with the benefit from title IV–E training. This notice invites public comment on issues and concerns that have arisen in the course of implementing and managing title IV–E training. The Children's Bureau will address all relevant comments in clarifying the current policy and regulatory framework within which title IV–E operates and is administered.

Dated: August 8, 1996.

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 96–21270 Filed 8–20–96; 8:45 am]

BILLING CODE 4184–01–M

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Uniform requirements for four State grant programs authorized by the Child Abuse Prevention and Treatment Act, i.e. Basic State Grant, Medical Neglect/Disabled Infants Grant, Children's Justice Act Grant and the Community Based Family Resource Program.

OMB No.: 0980–0257.

Description: The reports are used by NCCAN, the Regional Administrators and the States as a mechanism for monitoring the expenditure of funds and in evaluating and measuring State achievements in addressing the problems of child abuse and neglect. The reports are also used by NCCAN for the development of reliable comprehensive information and data from Statewide, regional and national perspectives upon which policy and program decisions may be based, research, service and demonstration priorities established, and information and recommendation provided to the Congress.

Respondents: State, Local and Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Basic State Grant	52	1	20	1,040
Medical Neglect/Disabled	52	1	20	1,040
Children's Justice Act	52	1	20	1,040
Community Based Family Resource Program	52	1	20	1,040

Estimated Total Annual Burden Hours: 4,160.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by title.

In addition, requests for copies may be made and comments forwarded to the Reports Clearance Officer over the Internet by sending message to rsargis@acf.dhhs.gov. Internet messages must be submitted as an ASCII file without special characters or encryption.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 15, 1996.

Bob Sargis,

Acting, Reports Clearance Officer.

[FR Doc. 96–21287 Filed 8–20–96; 8:45 am]

BILLING CODE 4184–01–M

National Institutes of Health

Proposed Data Collections Available for Public Comment and Recommendations

Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that Federal Agencies provide a 60-day notice in the Federal Register concerning each proposed collection of information. The National Institutes of Health (NIH) is publishing this notice to solicit public comment on a proposed data collection for the Loan Repayment Program for Research Generally. In order to request copies of the data collection plans and instruments, please contact Marc S. Horowitz, J.D. via E-mail at <mhl8k@nih.gov> or by calling (301) 402–5666 (not a toll-free number). Comments are invited on: (a) whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the collection; and (d) ways to minimize the collection burden of the respondents. Written comments are requested within 60 days of the publication of this notice. Send comments to: Marc S. Horowitz, J.D., Director, Office of Loan Repayment and Scholarship, National Institutes of Health, 7550 Wisconsin Avenue, Room 604, Bethesda, MD 20892–9121.

Proposed Project

The NIH intends to make available financial assistance, in the form of educational loan repayment, to M.D., Ph.D., D.O., D.D.S., D.M.D., and D.V.M. degree holders, or the equivalent, who perform biomedical or bio-behavioral research in NIH intramural laboratories for a minimum of three (3) years in research areas supporting the mission and priorities of the NIH. The Loan Repayment Program for Research Generally is authorized by section 487C of the Public Health Service Act, (42 U.S.C. 288–3). The Program may repay a maximum of $20,000.00 per year toward a participants' extant eligible educational loans, directly to lenders. Payments to lenders are in addition to NIH salary and benefits, and represents taxable income to the participants. To partially offset Federal tax liability, tax reimbursement payments, equal to 39% of the loan repayments made each year, will be made directly to the Internal Revenue Service for credit toward participants' tax accounts. Reimbursements for increased state and/or local tax liabilities may also be available. Participants must have qualifying educational debt in excess of 20 percent of their annual NIH base salary on the expected date of program eligibility.

The Loan Repayment Program for Research Generally is designed to recruit and retain biomedical professionals to the research laboratories of the NIH in exchange for repayment of qualifying educational loan debt. The information proposed for collection will be used by the Office of Loan Repayment and Scholarship to determine an applicant's eligibility for participation in the Program. The application consists of three parts: Part I (Information about the Applicant) is completed by the applicant; Part II (Loan Data Verification) is completed by the financial institution; and Part III (Recommendation) is completed by the recommenders.

The annual burden estimates are as follows:

	Number respondents	Number responses per respondent	Average burden per response (hours)
Applicant	40	1	3.00
Financial Institution	200	1	0.25
Recommenders	120	1	0.50

Comments Due Dates: Comments regarding this information collection are best assured of having their full effect if received on or before October 21, 1996.

Dated: August 13, 1996.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 96–21278 Filed 8–20–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Unsolicited P01.

Date: September 4, 1996.

Time: 1:00 p.m.

Place: Solar Bldg., Rm. 1A03, 6003 Executive Boulevard, Bethesda, MD 20892–7610, (301) 496–2550.

Contact Person: Dr. Paula Strickland, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C02, Bethesda, MD 20892–7610, (301) 402–0643.

Purpose/Agenda: To evaluate grant application.

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 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 15, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–21276 Filed 8–21–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Nursing Research; Notice of Meeting of the National Advisory Council and its Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research, National Institute of Nursing Research, National Institutes of Health and its Subcommittee on September 17–18, 1996.

The meetings will be open to the public as indicated below. Attendance 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.

A summary of the meetings, roster of committee members, and other information may be obtained from the Executive Secretary listed below. 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.

Name of Committee: Planning Subcommittee.

Date of Meeting: Sept. 17.

Place: National Institutes of Health, Building 31, Conference Room 5B03, Bethesda, MD.

Closed: 9:00 a.m. to 11:00 a.m.

Agenda: Discussion of long-term planning and policy issues and review of individual grant applications.

Name of Committee: National Advisory Council for Nursing Research.

Date of Meeting: Sept. 17–18, 1996.

Place: National Institutes of Health, Building 31, Conference Room 6, Bethesda, MD.

Open: Sept. 17, 1:00 p.m. to 5:30 p.m.

Agenda: NINR Director's Report Discussion: Report on the Meeting of Advisory Council And Board Representatives; Report of the Ad Hoc Communications Subcommittee, Obesity and Cardiovascular Risk: Genetics, Exercise, and Dietary Interactions; Rating of Grant Applications; Report of the Planning Subcommittee, Genetics Research Work Group Meeting.

Closed: Sept. 18, 9:00 a.m. to adjournment.

Executive Secretary: Dr. Lynn Amende, NINR, NIH, Building 45, Room 3AN–12, Bethesda, MD 20892.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health.)

Dated: August 15, 1996.

Anna Snouffer,

Committee Management Specialist, NIH.

[FR Doc. 96–21277 Filed 8–20–96; 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 19, 1996.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, Maryland.

Contact Person: Dr. Marcel Pons, Scientific Review Administrator, 6701 Rockledge Drive, Room 4196, Bethesda, Maryland 20892 (301) 435–1217.

Name of SEP: Behavioral and Neurosciences.

Date: August 19, 1996.

Time: 1:30 p.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.

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: August 15, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–21273 Filed 8–16–96; 11:46 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing; Notice of Proposed Information Collection for Public Comment

[Docket No. FR–4061–N–02]

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: October 21, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0846, for copies of the proposed forms and other available documents. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected, and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for Family Self-Sufficiency Program Coordinator Funds (Application) under Notice of Fund Availability—FR 4061

OMB Control Number: 2577–0198.

Description of the need for the information and proposed use: HUD uses the information as a basis for approving Public Housing Agency (PHA) applications for funds. Funds are available under this to employ or otherwise retain the services of FSS program coordinators for one year. Under the FSS program, PHAs are required to use Section 8 rental assistance together with public and private resources to provide supportive services to enable participating families to achieve economic independence and self-sufficiency.

Agency form numbers, if applicable:

Members of affected public: State or Local Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 600 respondents, four responses per respondent, 600 total responses × 4 hours per response for a total burden hours: 2,400. Status of the proposed information collection: Extension.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 14, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–21302 Filed 8–20–96; 8:45 am]

BILLING CODE 4210–33–M

Office of the Assistant Secretary for Policy Development and Research; Notice of Proposed Information Collection for Public Comment

[Docket No. FR–4056–N–04]

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments are due October 21, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships—telephone (202) 708–1537. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended.)

This Notice is soliciting comments from members of the public and affected entities concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of information to be collected; and (4) Minimize the burden of collection of information on those who are to respond; including through the use of appropriate automated technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of the Proposal: Notice of Funding Availability and Application Kit for the Community Outreach Partnership Centers Program (COPC).

Description of the need for the information and proposed use: The information is being collected to select grantees in this statutorily mandated competitive grant program. The information is also being used to monitor the performance of grantees to ensure they meet statutory and program goals and requirements.

Members of affected public: Institutions of higher education: 120 applicants and 25 grantees.

Estimation of the total number of hours needed to prepare the information collection including the number of respondents, frequency of response, and hours of response: Information pursuant to submitting applications will be submitted once.

Information pursuant to grantee monitoring requirements will be submitted twice a year. The following chart details the respondent burden on an annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Application	120	120	80	9,600
Quarterly Reports	25	100	16	16,000
Final Reports	25	25	16	400
Recordkeeping	25	25	16	400
	.....	.....	.....	26,400

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 13, 1996.

Michael A. Stegman,

Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 96–21303 Filed 8–20–96; 8:45 am]

BILLING CODE 4210–62–M

[Docket No. FR–4086–N–26]

Office of the Assistant Secretary for Housing; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: October 21, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451-7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Barbara D. Hunter, Telephone number (202) 708–3944 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Survey of Tenants in certain properties with HUD-held and foreclosed mortgages.

OMB Control Number: 2502–0410.

Description of the need for the information and proposed use: HUD-held or foreclosed properties. The HCD Amendments Act of 1978, as amended by the HCD of 1987 and the McKinney Amendments of 1988 requires that HUD preserve the number of units which are occupied by low- and moderate-income persons at the time of assignment or foreclosure, whichever is greater. HUD must, therefore, inquire as to the income level of unassisted tenants for whom information is not available.

Agency form numbers: None applicable.

Members of affected public: Individuals, households, businesses, other for-profit Federal agencies or employees. An estimation of the total numbers.

Status of the proposed information collection: Extension without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 12, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–21304 Filed 8–20–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–4086–N–23]

Office of the Assistant Secretary for Public and Indian Housing; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* October 21, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0846, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected, and (4)

minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Report on Program Utilization, Section 8 Moderate Rehabilitation.

OMB Control Number: 2577–0144.

Description of the need for the information and proposed use: HUD uses the information as a basis for approving Public Housing Agency (PHA) requisition for funds. PHAs submit an application to HUD which specifies the number of units, plans, and a schedule for the number of units that are expected to be under agreement and the number of units to be leased. Information regarding the rehabilitation and leasing schedule are provided in this report.

Agency form numbers, if applicable: HUD–52685.

Members of affected public: State or Local Government Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 600 respondents, four responses per respondent, 2400 total responses × .5 hours per response for a total burden hours: 1,200.

Status of the proposed information collection: Extension.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 14, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–62–M

Report on Program Utilization

Report on Program Utilization
Section 8 Moderate Rehabilitation
See Instructions on back

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0144 (exp. 8/31/96)

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0144), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collecton displays a valid OMB control number.

Do not send this form to the above address.

Public Housing Agencies (PHAs) administering the Section 8 Moderate Rehabilitation Program decide which units will be rehabilitated and how they will be rehabilitated. PHAs submit an Application for Moderate Rehabilitation to HUD which specifies the number of units, plans, and a schedule for the number of units that are expected to be under Agreement and the number of units to be leased. Information regarding the rehabilitation and leasing schedule is indicated on the Form HUD-52685. HUD uses the information on the form as a basis for approving PHA requisitions for funds. The information is also needed by HUD to respond to requests for housing starts from Congress, constitutent organizations and other interested parties. Responses to the collection of information are voluntary. The information requested does not lend itself to confidentiality.

1. Project Number: ☐☐☐☐☐☐☐☐☐☐☐☐☐

2. Report Date:

Mo.	Year

3. Report Period: ☐ Quarterly ☐ Annually

4. Initial Lease Date:

Mo.	Day	Year

	Units
5. Number of Units Authorized in Project:	
6. Number of Units Under Agreement(s) to Enter into HAP Contract(s):	
7. Number of Units Under HAP Contract(s):	
8. Number of Assisted Units Under Lease:	
9. Number of Assisted Units Under Lease to Elderly, Disabled or Handicapped:	

10. Name of Public Housing Agency:

DRAFT

Previous edition may be used until supply is exhausted

Submit an Original and 3 copies

form **HUD-52685** (07/23/96)
ref. Handbook 7420.3

BILLING CODE 4210–62–C

Instructions

A. *General Instructions.* The original and 2 copies of form HUD–52685 must be prepared and submitted to the HUD Field Office (Attention: Assisted Housing Management Branch) by Public Housing Agencies (PHAs) for each Section 8 Moderate Rehabilitation project under an Annual Contributions Contract (ACC). The report shall be based on project data as of the last day of the quarter or annually as of September 30, whichever is applicable.

B. *Reporting Frequency.*

1. *Quarterly Reporting.* The report must first be submitted as of the end of the quarter during which the ACC was initially executed or amended to incorporate a new project. Thereafter, it shall be submitted as of the end of each subsequent quarter (even if there is no change from the previous report) until 95 percent of the units in the project (i.e., authorized by the ACC) are under lease. The report must be submitted to and received by the HUD Field Office by the 10th day of the month following the quarter covered by the report, i.e. January 10, April 10, July 10, and October 10.

2. *Annual Reporting.* Once 95 percent of the units in the project (i.e., authorized by the ACC) are under lease, reporting on the form HUD–52685 must be accomplished annually as of September 30 to be received by the HUD Field Office by October 10. Should the project reach 95 percent occupancy during a quarter other than the quarter ending September 30, that quarterly report must be submitted, but no further reporting is required until September 30 of that year. Of course, if 95 percent occupancy is reached during the quarter ending September 30, the report will be submitted as of September 30 and, in Item 3, should be indicated as a quarterly report.

Once annual reporting has begun, reporting on form HUD–52685 will continue in that manner, even if the assisted units under lease drop below 95 percent of the units in the project.

C. *Detailed Instructions.* (Please print or type as follows:)

1. *Project Number.* Enter the eleven character alpha/numeric project number (the 5th character, K, is preprinted on the form) assigned to the project by the HUD Field Office. Example: MA06–K123–001.

2. *Report Date.* Enter the last month/year (e.g., 03/80) of the quarter/year covered by the report.

3. *Reporting Period.* Check appropriate box. (See Part B.)

4. *Initial Lease Date.* Enter the month/day/year (e.g., 06/09/80) on which first assisted lease for the project is signed by the tenant and owner. This item is completed once and only on the quarterly report which represents the first time assisted units under lease are reported (Item 8).

5. *Number of Units Authorized in Projects.* Enter the number of units in the project as stated in the ACC.

6. *Number of Units Under Agreement(s) to Enter into a HAP Contract(s).* Enter the total number of assisted units for which a HAP Agreement(s) has been executed including those Agreements which have resulted in HAP Contracts. Do not report for this quarter/year only, but cumulatively for all units in this project. Exclude those assisted units which have dropped out of the Program and for which a HAP Contract will not be executed. Enter 0 if none.

7. *Number of Units Under HAP Contract(s).* Enter the total number of assisted units for which HAP Contract(s) have been executed. Do not report for this quarter/year only, but cumulatively for all units in this project. Exclude those assisted units which have dropped out of the Program and for which HAP Contracts have been terminated. Enter 0 if none.

8. *Number of Assisted Units Under Lease.* Enter the total number of assisted units (family and elderly, disabled or handicapped) under lease to families receiving Section 8 assistance. Do not report for this quarter/year only, but cumulatively for all units in this project. Exclude those assisted units no longer occupied by tenants receiving Section 8 assistance. Enter 0 if none.

9. *Number of Assisted Units Under Lease to Elderly, Disabled or Handicapped.* Enter the total number of these assited units under lease, including those in Item 8 above. Do not report for this quarter/year only, but cumulatively for all units in this project. Exclude those assisted units no longer occupied by elderly, disabled or handicapped tenants receiving Section 8 assistance. ''Elderly, disabled or handicapped'' is defined as the family head of household or spouse being at leat 62 years of age, disabled, or handicapped. Enter 0 if none.

10. *PHA Name.* Print or type the name of the PHA with which HUD has entered into an ACC.

[FR Doc. 96–21305 Filed 8–20–96; 8:45 am]

BILLING CODE 4210–62–M

[Docket No. FR–4086–N–25]

Office of the Assistant Secretary for Housing; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due.* October 21, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Barbara D. Hunter, Telephone number (202) 708–3944 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Management Reviews of Multifamily Projects

OMB Control Number: 2502–0178

Description of the need for the information and proposed use: Management Review, Project Operation Evaluation. Form is completed by HUD staff during on-site reviews. Form is used to evaluate quality of management; determine causes of problems, devise corrective actions in order to safeguard the Department's financial interests and ensure that tenants are provided with decent, safe and sanitary housing.

Agency form numbers: HUD 9834.

Members of affected public: Businesses or other for-profit and Non-profit institutions.

Status of the proposed information collection: Extension without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 9, 1996.

Nicolas P. Retsinas,

A/S Secretary for Housing—Federal Housing Commissioner

[FR Doc. 96–21306 Filed 8–20–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–4086–N–24]

Office of the Assistant Secretary for Housing; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* October 21, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Barbara D. Hunter, Telephone number (202) 708–3944 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Multifamily Default Status Report.

OMB Control Number: 2502–0041.

Description of the need for the information and proposed use: Mortgagees use this report to notify HUD that a project owner has defaulted and that an assignment of acquisition will result if HUD and the mortgagor do not develop a plan for reinstating the loan. The report triggers HUD negotiations with the mortgagor.

Agency form numbers: HUD 92426.

Members of affected public: Mortgagees, HUD.

An estimation of the total numbers of hours needed to prepare the information collection is 1,000 the number of respondents is 2,000, frequency of response is 3, and the hours of response is 1,000.

Status of the proposed information collection: Extension without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 14, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–21307 Filed 8–20–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3997–N–02]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* September 20, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 6, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Public and Indian Housing Drug Elimination Program (FR–3997).

Office: Public and Indian Housing.

OMB Control Number: 2577–0124.

Description of the need for the information and its proposed use: Public Housing Authorities (PHAs) and Indian Housing Authorities (IHAs) must apply for grant funds to use in eliminating drug-related crime in Public and Indian Housing projects. The application process includes developing a plan, strategy, seeking tenant comments, certifying compliance with HUD requirements and providing a comprehensive drug prevention program.

Form Number: SF–424, SF–424A, SF–424B, SF–LLL, HUD–2880, and HUD–50070.

Respondents: State, Local, or Tribal Government and Not-For-Profit Institutions.

Frequency of Submission: Semi-Annually and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Section 761.20	800		1		64		51,200
Section 761.25	5,000		1		1		5,000
Section 761.30(a)	800		2		24		38,400
Section 761.30(b)	800		1		1		800

Total Estimated Burden Hours: 95,400.

Status: Reinstatement, without changes.

Contact: Malcolm Main, HUD, (202) 708–1197; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: August 6, 1996.

[FR Doc. 96–21308 Filed 8–20–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–3960–N–06]

Office of the Assistant Secretary for Policy Development and Research; Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of the Assistant Secretary for Policy Development and Research—HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* August 28, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8126, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships—telephone (202) 708–1537. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Karadbil.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to the Community Renaissance Fellows Program (CRFP). HUD seeks to implement this initiative as soon as possible.

Under the Community Renaissance Fellows Program, HUD will create a new profession—community builders. Mid-level professionals will be selected through a nation-wide competition to learn how to transform neighborhoods into healthy, vibrant communities. Fellows will be placed in HOPE VI public housing transformation projects that are being converted to mixed income communities. The skills they learn can then be transferred to other neighborhood transformation projects. In addition to the on-site experience, Fellows will attend intensive seminars three times a year during their two-year Fellowships to learn state-of-the-art information about community building. The educational component of the program will be designed and offered by Yale University. At least 20 Fellows will be selected this year.

Submission of the information required under this information collection is mandatory in order to compete for and receive the benefits of the program. All materials submitted are subject to the Privacy Act and will not be disclosed. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The OMB control number, when assigned, will be announced by a separate notice in the Federal Register.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35):

(1) Title of the information collection proposal: Applications Kit—Community Renaissance Fellows Program

(2) Summary of the collection of information:

Each applicant for CRFP would be required to submit current information, as listed below as:

1. Biographical information
2. Previous work experience
3. Activities and achievements
3. References
4. Responses to three essay questions
5. Certification that the information provided is correct

(3) Description of the need for the information and its proposed use:

To appropriately determine which Fellows should be selected certain information is necessary about the applicants' job history, plans for the future and analytic and writing skills.

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:

Respondents will be mid-level professional in development fields. Fellows will also be expected to prepare and submit monthly progress reports.

The estimated number of respondents submitting applications is 300. The proposed frequency of the response to the collection of information is one-time. The application need only be submitted once. The estimated number of respondents to the monitoring requirements is 20.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

Reporting Burden:

Number of respondents: 300 for applicants; 20 for monitoring requirements.

Total burden hours: 16 hours per respondent for application); 2 hours a year per respondent for monitoring requirements.

Total Estimated Burden Hours: 5,280.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 13, 1996.

Michael A. Stegman,

Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 96–21309 Filed 8–20–96; 8:45 am]

BILLING CODE 4210–62–M

[Docket No. FR–4086–N–32]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork

Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* September 20, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 6, 1996.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Schedule of Pooled Mortgages—Single Family Loans, Graduated Payment Loans, and Growing Equity Loans.

Office: Government National Mortgage Association (GNMA).

OMB Approval Number: 2510–0010.

Description of the Need for the Information and its Proposed Use: The form provides a means of identifying specific single family mortgages in the pool and assures that all required mortgage and related documents have been delivered to a document custodian. This information is necessary to assure GNMA's interest in the pooled mortgages in the event of a default.

Form Number: HUD–11706.

Respondents: The Federal Government and Business or Other For-Profit.

Frequency for Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–11706	680		18		.25		2,935

Total Estimated Burden Hours: 2,935.

Status: Reinstatement with changes.

Contact: Sonya K. Suarez, HUD, (202) 708–2884; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: August 6, 1996.

[FR Doc. 96–21310 Filed 8–20–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4086–N–31]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: September 20, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 6, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Case Studies of Vouchered-Out Assisted Properties.

Office: Policy Development and Research.

OMB Approval Number: None.

Description of the need for the information and its proposed use: The purpose of the study is to help the Department of Housing and Urban Development (HUD) learn more about housing and neighborhood outcomes for renters who leave distressed multifamily assisted housing for residence in unassisted housing. The study will provide the counseling role HUD will undertake in these relocation patterns.

Form Number: None.

Respondents: Individuals or Households.

Frequency of submission: One-Time.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Study	200		1		.42		84

Total estimated burden hours: 84.

Status: New.

Contact: John Carson, HUD, (202) 708–3700; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: August 6, 1996.

[FR Doc. 96–21311 Filed 8–20–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4086–N–30]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* October 21, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Kerry J. Mulholland, Telephone number (202) 708–0614, Ext. 2649 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Intent (ELIHPA) to Extend Low-Income Affordability Restrictions.

OMB Control Number: 2502–0497.

Description of the Need for the Information and Proposed Use: Title II of the Housing and Community Development Act of 1987 as amended by the Title III of the Housing and Community Development Act of 1992 (the Statutes) requires the owner to file a Notice of Intent with the Department, residents of the project, and State and local governments if the owner is proceeding under the Emergency Low-Income Housing Act of 1987 (ELIHPA). This requirement was implemented by regulation at 24 CFR 248.211.

By Statute, an owner must file the Notice of Intent so that the Department, the residents of the project, and state or local government agencies are aware of the owner's intention to seek incentives or prepay its mortgage under the provisions of ELIHPA. This information will be used by the Department to track properties preceeding through ELIHPA.

Agency Form Numbers, if Applicable: HUD–9608–B.

Members of Affected Public: The number of respondents was estimated based on the number of potential ELIHPA projects which will be requesting incentives over the next 5 years. The Department estimates that approximately 250 projects will proceed under ELIHPA, an average of 50 per year. It will take approximately one half hour for the owner to read, complete and submit.

Estimation of the total number of hours needed to prepare the information collection is .25 hours, the number of respondents is 50, frequency of response is 1, and the hours of response is 1.25.

Status of the Proposed Information Collection: Extension with change.

Authority: Section 236 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 15, 1996.

James E. Schoenberger,

Associate General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–21312 Filed 8–20–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–4086–N–29]

Office of the Assistant Secretary for Housing; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment due:* October 21, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Barbara D. Hunter, Telephone number (202) 708–3944 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Rent Schedule Low Rent Housing.

OMB Control Number: 2502–0012.

Description of the Need for the Information and Proposed Use: Certain Federal statutes and regulations require the Department to review rents and/or charges for all projects either insured or held by HUD, except for specified unsubsidized projects. These regulations also require the Department's approval of all principals in HUD insured and financed projects. HUD form 92458 serves both of these purposes by documenting rents and charges that the Department approves and by requiring owners to provide a current listing of their projects' principals.

Agency Form Numbers: HUD 92458.

Members of Affected Public: Non-Profit Institutions, Business or other for profit, Federal agencies or employees.

An estimation of the total numbers of hours needed to prepare the information collection is 22,642, the number of respondents is 3,126, frequency of response is 1, and the hours of response is 7,243.

Status of the Proposed Information Collection: Extension without change in the substance or in the method of collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 30, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 96–21313 Filed 8–20–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–4049–N–03]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* September 20, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 6, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Under HUD's Grant Program for Lead-Based Paint Hazard Reduction Notice of Funding Availability (NOFA) Information Collection Requirement (FR–4049).

Office: Lead-Based Paint Abatement and Poisoning Prevention.

OMB Approval Number: 2539–0005.

Description of the Need for the Information and Its Proposed Use: HUD is authorized under Title X of the Housing and Community Development Act of 1992 to provide grants to State and local governments to reduce lead-based paint hazards in low-income priority private housing. To comply with this authority, HUD's Office of Lead-Based Paint Abatement and Poisoning Prevention will issue NOFAs periodically to these constituents.

Form Number: None.

Respondents: State, Local, or Tribal Government and Individuals or Households.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	75		1		120		9,000

Total Estimated Burden Hours: 9,000.

Status: Extension, no changes.

Contact: Susan Judd, HUD, (202) 755–1822 ext. 155; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: August 6, 1996.

[FR Doc. 96–21314 Filed 8–20–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–2491–N–05]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* September 20, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 6, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Actions to Reduce Losses in FHA Programs (FR–2491).

Office: Housing.

OMB Control Number: 2502–0392.

Description of the Need for the Information and its Proposed Use: This information collection requires a mortgagee, when notified by the FHA Commissioner, that the mortgage had a higher than normal rate of serious defaults and claims in the proceeding year to submit a report to the Commissioner and, if applicable, a plan and timetable for corrective action.

Form Number: None.

Respondents: Business or Other For-Profit and Not-For-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	200		1		40		8,000

Total Estimated Burden Hours: 8,000.

Status: Reinstatement without changes.

Contact: Andrew Zirneklis, HUD, (202) 708–1515; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: August 6, 1996.

[FR Doc. 96–21315 Filed 8–20–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4086–N–28]

Office of the Assistant Secretary for Fair Housing and Equal Opportunity; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* October 21, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Josie D. Harrison, Reports Liaison Office, Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 - 7th Street, SW, Room 5124, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: John H. Waller, (202) 708–2251, (this is not a toll-free number) for copies of the

proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Form: Economic Opportunities for Low- and Very Low-Income Persons.

OMB Control Number: 25290043.

Description of the Need for the Information and Proposed Use: The information will be used by the Department to monitor program recipients' compliance with Section 3. HUD Headquarters will use the information to assess the results of the Department's efforts to meet the statutory objectives of Section 3. Also, the data collected will be used by recipients as a self-monitoring tool. If the information is not collected, HUD will be unable to prepare the mandatory reports to Congress or to assess the effectiveness of Section 3.

Agency Form Numbers, if Applicable: Form HUD–60002.

Members of Affected Public: State and local governments or their agencies, public and private non-profit organizations, or other public entities.

Estimation of the Total Numbers of Hours Needed to Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response: On an annual basis 58,403 respondents (HUD recipients) will submit one report to HUD. It is estimated that two hours per annual reporting period will be required of the recipients to prepare the Section 3 report for a total of 116,806 hours.

Status of the Proposed Information Collection: Revision of a currently approved collection to reflect the collection of information from HUD recipients only and to remove the request for racial/ethnic data.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C., as amended. Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 8, 1996.

Laurence D. Pearl,

Acting Deputy Assistant Secretary for Policy and Initiatives.

[FR Doc. 96–21316 Filed 8–20–96; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–818186

Applicant: National Biological Service, Missouri Cooperative Fish and Wildlife Research Unit, Columbia, Missouri (David L. Galat, Principal Investigator).

The applicant requests a permit to take (capture and release) Pallid sturgeon (*Scaphirhynchus albus*) within the Missouri River at the mouth of the River (River Mile 0) to Sioux City, Iowa, and the Mississippi River from the Iowa-Missouri border south to the Missouri-Arkansas border. Activities are proposed in conjunction with benthic fish population and habitat use studies along the River. Data obtained will assist Federal agencies and others in planning activities on the River in compliance with the Endangered Species Act and in support of recovery of the species.

PRT–805269

Applicant: Dr. Daniel Soluk, Illinois Natural History Survey, Champaign, Illinois.

The applicant requests an amendment to his permit authorizing take (collect, live-capture and handle) of Hine's Emerald Dragonflies (*Somatochlora hineana*). The application for amendment requests additional authority at sites in Cook, DuPage, and Will Counties, Illinois, and in Door County, Wisconsin. Proposed activities are for the purpose of enhancement of survival of the species through scientific research.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Ecological Service Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536 x250); FAX: (612/725–3526).

Dated: August 15, 1996.

T. J. Miller,

Acting Assistant, Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.

[FR Doc. 96–21258 Filed 8–20–96; 8:45 am]

BILLING CODE 4310–55–P

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–818228

Applicant: Antibody Systems, Bedford, TX.

The applicant requests a permit to import blood and tissues samples from Komodo Island monitor (*Varanus kimodoensis*) from Komodo Island, Indonesia, for the purpose of scientific research that will benefit the species in the wild. This notice covers activities conducted by the applicant over a five year period if necessary.

PRT–818329

Applicant: Wild About Cats, Auburn, CA.

The applicant requests a permit to import one or two captive-born cheetah (*Acinonyx jubatas*) from DeWildt's Cheetah Research Center, DeWildt, South Africa, for the purpose of enhancement of the species through conservation education.

PRT–817981

Applicant: United States Fish and Wildlife Service/Region 2, Albuquerque, NM.

The applicant requests a permit to import five Whooping cranes (*Grus americana*) from Calgary Zoo, Calgary, Alberta, Canada for the purpose of enhancing the species by reintroducing them into the wild.

PRT–817982

Applicant: United States Fish and Wildlife Service/Region 2, Albuquerque, NM.

The applicant requests a permit to export three Whooping cranes (*Grus americana*) to Calgary Zoo, Calgary, Alberta, Canada for the purpose of enhancement of the species through scientific research and propagation.

PRT–817952

Applicant: Zoological Society of San Diego, San Diego, CA.

The applicant requests a permit to import a male and female Kagu (*Rhynochetos jubatus*) born in captivity at Le Pac Forestier, New Caledonia for the purpose of enhancement of the survival of the species through propagation.

PRT–817949

Applicant: Dale Gibbons, Longview, WA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–818486

Applicant: Duke University Primate Center, Durham, NC.

The applicant requests a permit to export the placenta of a captive-born red ruffed lemur (*Varecia variegata ruber*) to Dr. Thomas Klonisch, Department of Anatomy and Cell Biology, University of Halle, Halle, Germany, for the purpose of scientific research to benefit the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 16, 1996.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–21335 Filed 8–20–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[WY–920–06–1320–01]

Competitive Coal Lease Sale; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Competitive Coal Lease Sale; Antelope Tract, WYW128322.

SUMMARY: Notice is hereby given that certain coal resources in the Antelope Tract described below in Converse County, Wyoming, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 2:00 p.m., on Wednesday, September 18, 1996. Sealed bids must be submitted on or before 4:00 p.m., on Tuesday, September 17, 1996.

ADDRESSES: The lease sale will be held in the First Floor Conference Room (Room 107) of the Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003. Sealed bids must be submitted to the Cashier, Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, or Eugene Jonart, Coal Coordinator, at (307) 775–6258 and (307) 775–6257, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application filed by Antelope Coal Company of Gillette, Wyoming. The coal resources to be offered consist of all reserves recoverable by surface mining methods in the following-described lands located in Converse County approximately 55 miles north of Douglas, Wyoming and 60 miles south of Gillette, Wyoming.

T. 41 N., R. 70 W., 6th P.M., Wyoming,
Sec. 30: Lots 15 thru 18;
T. 41 N., R. 71 W., 6th P.M., Wyoming,
Sec. 25: Lots 5 thru 8, 13, 14;
Sec. 26: Lots 9 thru 11, 14, 15.
Containing 617.20 acres.

Of the total acreage, approximately 155 acres are unsuitable for mining due to the presence of County Road 37 and the Burlington Northern/Chicago and Northwestern railroad right-of-way along the north side of the eastern half of the tract.

The tract is adjacent to the Antelope Mine and contains surface minable coal reserves in both the Anderson and the Canyon seams currently being mined in the existing mine. The Anderson seam averages about 40 feet thick and outcrops in the eastern half of the tract. The deeper Canyon seam averages about 33.5 feet thick.

The overburden above the Anderson seam averages about 94 feet thick while the overburden above the Canyon seam east of the Anderson outcrop averages about 130 feet thick. The interburden between the two seams averages about 31 feet thick. The total in-place stripping ratio (BCY/ton) of the two seams varies from about .5:1 to about 4:1, but is generally between 1:1 and 2:1 over most of the tract.

The tract contains an estimated 60,364,000 tons of minable coal with 31,929,000 tons coming from the Anderson seam and 28,435,000 tons coming from the Canyon seam. This estimate of minable reserves does not include any tonnage from the 155 acres unsuitable for mining, nor does it include tonnage from localized seams or splits containing less than 5 feet of coal. The coal in both seams is ranked as subbituminous C. The overall average quality of the two seams averages 8779 Btu/lb., 4.22 percent ash, 25.7 percent moisture, 1.21 percent sodium, and .23 percent sulfur. These quality averages place these coal reserves near the top end of coal quality currently being mined in the southern Powder River Basin.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid equals the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4:00 p.m., on Tuesday, September 17, 1996, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale.

If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a

high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre, or fraction thereof, and of a royalty payment to the United States of 12.5 percent of the value of coal produced by strip or augur mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the Wyoming State Office at the addresses above. Case file documents, WYW128322, are available for inspection at the Wyoming State Office.

Robert A. Bennett,

Deputy State Director, Minerals and Lands.

[FR Doc. 96–20957 Filed 8–20–96; 8:45 am]

BILLING CODE 4310–84–M

[NM–030–1990–00]

Draft Environmental Impact Statement (DEIS) for the Little Rock Mine Project, Grant County, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability and Notice of Public Hearing.

SUMMARY: In accordance with section 102(c) of the National Environmental Policy Act, the Mimbres Resource Area has prepared a DEIS analyzing the potential environmental impacts of the proposed re-establishment, operation, and reclamation of the Little Rock Mine Project located approximately 7 miles south of Silver City, New Mexico. The proposed project would also require the construction of a haul road that would enable Phelps Dodge Mining Company (PDMC) to transport ore from the Little Rock Mine pit to existing Tyrone operations for processing. The permit area is approximately 600 acres of which the proposed mine pit would cover 190 acres and the haul road 40 acres.

DATES: Written comments on the DEIS must be submitted or postmarked no later than October 15, 1996. A public hearing will be held at the time and place listed under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Written comments should be sent to: Juan S. Padilla, Team Coordinator, BLM, Las Cruces District, 1800 Marquess, Las Cruces, NM 88005.

FOR FURTHER INFORMATION CONTACT: Juan S. Padilla, Team Coordinator at (505) 525–4376.

SUPPLEMENTARY INFORMATION: Those individuals, organizations, Native American tribes, agencies, and other government agencies with a known interest in the proposal have been sent a copy of the DEIS. Single copies of the document are available from the BLM Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico and the BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico. Reading copies are available for review at public and university libraries in Las Cruces, Silver City, Deming, Lordsburg, Socorro, and Santa Fe, New Mexico. A public hearing has been scheduled for 7:00 p.m. on Wednesday, September 25, 1996, at the Grant County Courtroom, 2nd Floor, 201 North Cooper Street, Silver City, New Mexico. Both oral and written comments may be given at the hearing. Written comments may also be submitted to the BLM, Las Cruces District, 1800 Marquess, Las Cruces, NM 88005 on or before October 15, 1996.

Oral testimony at the hearing will be limited to 10 minutes for each witness. Additional time may be granted at the discretion of the presiding officer based on the number of speakers registered. Written text of prepared speakers may be filed at the hearing whether or not the speaker has been able to complete the oral delivery in the allotted time. All oral and written comments on the adequacy of the Draft EIS will receive consideration in the Final EIS.

Dated: August 14, 1996.

Timothy M. Murphy,

Acting District Manager, Las Cruces.

[FR Doc. 96–21257 Filed 8–20–96; 8:45 am]

BILLING CODE 4310–VC–P

National Park Service

Richmond National Battlefield Park

AGENCY: National Park Service; Interior.

ACTION: Notice of availability of Final General Management Plan/ Environmental Impact Statement for Richmond National Battlefield Park.

SUMMARY: This notice announces the availability of the Final General Management Plan/Environmental Impact Statement for Richmond National Battlefield Park. Comments will be accepted until September 9, 1996.

SUPPLEMENTARY INFORMATION: Final General Management Plan/ Environmental Impact Statement discusses the management use and development of the Richmond National Battlefield Park.

Copies are available at Richmond National Battlefield Park Headquarters.

FOR FURTHER INFORMATION CONTACT: Superintendent, Richmond National Battlefield Park, 3215 E. Broad Street, Richmond, VA 23223, 804–771–2808.

Dated: August 1, 1996.

Warren D. Beach,

Assistant Field Director, Northeast Field Area.

[FR Doc. 96–21228 Filed 8–20–96; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–379]

Certain Starter Kill Vehicle Security Systems; Notice of Commission Determination to Affirm an Order of the Presiding Administrative Law Judge Denying Respondents' Motion for Sanctions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm the presiding administrative law judge's (ALJ's) order (Order No. 12) denying respondents' motion for sanctions in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Rhonda M. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3083.

SUPPLEMENTARY INFORMATION: On November 20, 1995, Code Alarm, Inc. of Madison Heights, Wisconsin filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain starter kill vehicle security systems by reason of alleged contributory and induced infringement of certain claims of a U.S. patent owned by complainant.

The Commission instituted an investigation of the complaint, and published a notice of investigation in the Federal Register on November 28, 1995. 60 FR 58,638. The notice named Directed Electronics, Inc. of Vista, California and Nutek Company of Taipei, Taiwan as respondents.

On February 26, 1996, complainant filed a motion to terminate the

investigation, pursuant to Commission rule 210.21, 19 C.F.R. § 210.21, based upon withdrawal of the complaint. Respondents opposed the motion, while the Commission investigative attorney (IA) filed a response in support of complainant's motion.

On February 29, 1996, respondents filed a motion for sanctions against complainant. Respondents alleged that complainant should be sanctioned for filing an unfounded complaint and for making factual representations without reasonable prior inquiry. Complainant and the IA opposed the motion.

On March 5, 1996, the ALJ issued an initial determination (ID) (Order No. 13) granting complainant's motion to terminate the investigation. Concurrently, the ALJ issued an order (Order No. 12) denying respondents' motion for sanctions. On March 15, 1996, respondents filed a petition for review of the ID and Order No. 12. The IA and complainant filed responses in opposition to the petition. By notice issued April 9, 1996, the Commission gave notice of its determination not to review the ID. See 61 FR 16,807 (Apr. 17, 1996).

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission rule 210.25, 19 C.F.R. § 210.25.

Copies of the ALJ's Order No. 12 and all other nonconfidential documents filed in connection with this investigation are or will be 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., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: August 15, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–21339 Filed 8–20–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS) for Development of a United States Penitentiary Near the Big Sandy Regional Airport in Martin County, Kentucky

AGENCY: Federal Bureau of Prisons, Department of Justice.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

The United States Department of Justice, Federal Bureau of Prisons has determined that a United States Penitentiary (USP) is needed in its system.

The Federal Bureau of Prisons has preliminarily evaluated several sites in Eastern Kentucky and determined that the DEIS will focus upon a 500 acre tract on new State Route #3 across from the Big Sandy Regional Airport in Martin County, Kentucky.

The Bureau of Prisons proposes to build and operate a high-security United States Penitentiary, with an adjacent minimum-security satellite camp, in Martin County, Kentucky. The main high-security facility would provide habitation for approximately 1000 inmates, and up to 300 inmates at the minimum-security camp. The Bureau of Prisons proposes to build the facility near Debord, Kentucky, on a portion of a 500 acre tract located on new State Route #3 across from the Big Sandy Regional Airport in Martin County, Kentucky. The site appears to be of sufficient size to provide space for housing, programs, administrative services and other support areas such as staff training.

The Process

In the process of evaluating the site, several aspects will receive detailed examination including: utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources and socio-economic impacts.

Alternatives

In developing the DEIS, the options of ''no action'' and ''alternative sites'' for the proposed facility will be fully and thoroughly examined.

Scoping Process

During the preparation of the DEIS, there will be opportunities for public involvement in order to determine the issues to be examined. A Scoping Meeting will be held at 6:00 p.m. on Tuesday, August 27, 1996, at the Big Sandy Regional Airport in Martin County, Kentucky. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, numerous public information meetings have been held by representatives of the Bureau of Prisons with interested citizens, officials and community leaders.

DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment.

ADDRESSES: Questions concerning the proposed action and the DEIS may be directed to: David J. Dorworth, Chief, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, D.C. 20534, telephone (202) 514–6470, telefacsimile (202) 616–6024.

Dated: August 15, 1996.

David J. Dorworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 96–21233 Filed 8–20–96; 8:45 am]

BILLING CODE 4410–05–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8857]

Notice of Receipt of an Application for a New In Situ Uranium Mine and Announcement of an Opportunity to Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Receipt of an Application For a New In Situ Uranium Mine and Announcement of an Opportunity to Request a Hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received an application from Power Resources, Inc. (PRI) for a new in situ uranium mine in the Gas Hills of Wyoming. Persons potentially affected by an NRC decision to license the facility, have the opportunity to request a hearing on this action.

FOR FURTHER INFORMATION CONTACT: Robert Carlson, Uranium Recovery Branch, Mail Stop T–7–J–9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U. S. Nuclear Regulatory Commission,

Washington, DC 20555. Telephone (301) 415–6606.

SUPPLEMENTARY INFORMATION: On June 7, 1996, Power Resources, Inc. (PRI) submitted an application for a license to construct and operate a new in situ uranium mine. The proposed facility will be located at PRI's Gas Hills properties in Fremont and Natrona Counties, Wyoming, about 85 miles west of Casper, and will include an ion exchange facility and associated wellfields.

At the proposed Gas Hills facility, PRI intends to leach uranium directly underground from ore bearing sands by injecting mining solutions into the ore rich formations and processing them to remove the uranium. The uranium will be loaded onto ion exchange resins, which will be transported to PRI's Highland in situ leach mine and processing plant approximately 60 miles east of Casper, for processing into yellowcake. Because the proposed Gas Hills facility is to be operated as a satellite to PRI's Highland facility, PRI has requested that the Gas Hills facility be authorized to operate by amending the existing Highland license.

Citing the recent upturn in the uranium market and the increased demand for yellowcake, PRI indicated it desires to have the proposed Gas Hills satellite facility in production during calendar year 1998. NRC staff expects to begin work on the application in the September/October 1996 time frame, and depending on the completeness of the application, anticipates having the review complete and the license issued in late 1997.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the Federal Register. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Power Resources, Inc., Suite 230, 800 Werner Court, Casper, Wyoming, 82601; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 14th day of August 1996.

Charlotte Abrams,

Acting Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–21286 Filed 8–20–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 150–00032–EA; General License EA 95–101; ASLBP No. 96–719–04–EA]

Atomic Safety and Licensing Board; Testco, Inc.; Order Imposing Civil Monetary Penalty; Notice of Hearing

August 15, 1996.

Notice is hereby given that, by Prehearing Conference Order dated August 15, 1996, the Atomic Safety and Licensing Board for this proceeding has granted the July 20, 1996 request of TESTCO, Inc., submitted by its president Mr. James L. Shelton, for a hearing in the above-entitled proceeding. The Licensing Board also consolidated this proceeding with the James L. Shelton proceeding, Docket No. IA 95–055.

The TESTCO proceeding concerns the Order Imposing Civil Monetary Penalty of $5000, issued by the NRC Staff on March 14, 1996 (61 Fed. Reg. 14583, April 2, 1996). The parties to the proceeding are TESTCO, Inc. and the NRC Staff. The issues to be considered at the hearing are (a) whether the Licensee was in violation of the Commission's requirements as set forth in the Notice of Violation dated October 31, 1995; and (b) whether, on the basis of such violation, the Order Imposing Civil Monetary Penalty should be sustained.

For further information, see the Order Imposing Civil Monetary Penalty, cited above. Other materials concerning this proceeding (as well as the consolidated James L. Shelton proceeding) are on file at the Commission's Public Document Room, 2120 L St. NW., Washington DC 20555, and at the Commission's Region II office, 101 Marietta Street, NW., Suite 2900, Atlanta, Georgia 30323–0199.

During the course of this proceeding, the Licensing Board will conduct one or more prehearing conferences and, as necessary, evidentiary hearing sessions (all consolidated with those in the James L. Shelton proceeding). The time and place of these sessions will be announced in later Licensing Board Orders. Except to the extent that prehearing conferences may be held through telephone conference calls, members of the public will be invited to attend these sessions.

Dated: Rockville, Maryland August 15, 1996.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 96–21279 Filed 8–20–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–390]

Tennessee Valley Authority, Watts Bar Nuclear Plant Unit 1; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition for action under 10 CFR 2.206 received from Ms. Jane A. Fleming (Petitioner), dated January 25, 1996, with regard to the Watts Bar Nuclear Plant Unit 1 (Watts Bar).

The Petitioner requested the Chairman of the U.S. Nuclear Regulatory Commission (NRC) implement a full and impartial review

of the entire licensing process for the Watts Bar Nuclear Plant, operated by the Tennessee Valley Authority (TVA or Licensee), examining both the implementation of the review procedures used by the NRC staff and the validity of the information presented by TVA. The Petitioner requested that the Chairman suspend or revoke the low-power operating license for Watts Bar until such a review is satisfactorily completed and the issues in dispute are resolved.

The Director of the Office of Nuclear Reactor Regulation has determined to deny the Petition. The reasons for this decision are explained in the enclosed ''Director Decision Pursuant to 10 CFR 2.206,'' (DD–96–11) the complete text of which follows this notice and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the Local Public Document Room for the Watts Bar Nuclear Plant Unit 1, located at Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

A copy of this Decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, this Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 15th day of August 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

Director's Decision Under 10 CFR 2.206

I. Introduction

By a letter dated January 25, 1996, to NRC Chairman Jackson, Ms. Jane Fleming (Petitioner) requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the Watts Bar Nuclear Plant, Unit 1 (Watts Bar), operated by the Tennessee Valley Authority (TVA or Licensee). Specifically, Petitioner requested that a full and impartial review of the entire Watts Bar licensing process be conducted, examining the review procedures used by NRC and the validity of the information presented by TVA, and that the low-power license for Watts Bar be suspended or revoked until such review is completed and the issues in dispute are resolved. Petitioner also suggested that, if the Chairman did not choose to initiate her own review, the letter be considered under § 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). Petitioner supplemented the January 25, 1996, letter with another letter dated January 30, 1996, to Chairman Jackson.

The Commission referred the letters to me for treatment as a Petition pursuant to 10 CFR 2.206 of the Commission's regulations.

The Petitioner asserted that the NRC staff was not fully aware of TVA's license commitments and adherence to these commitments when it issued a low-power license to TVA on November 9, 1995. Specifically, Petitioner asserted that a letter from Stewart D. Ebneter, Regional Administrator, NRC Region II, to Oliver Kingsley, TVA, dated January 12, 1996, stated that there were open issues regarding the radiation monitoring system for Watts Bar when TVA requested an operating license. Petitioner asserted that this raised a question about the conclusion drawn by the NRC staff in Supplement 16 to the Watts Bar Safety Evaluation Report (SSER 16)[1] issued in September 1995 that the system meets the acceptance criteria of the Standard Review Plan[2] and is, therefore, acceptable. Petitioner also asserted that the NRC staff, in its licensing review, was not aware of the criteria applicable to the licensing of Watts Bar. The specific bases for these assertions involved the design, installation and testing of the radiation monitors at Watts Bar. The Petitioner also briefly refers to concerns associated with microbiologically induced corrosion (MIC) and security, as well as a concern that the large number of deviations described in the SER supplements documenting the NRC licensing review of Watts Bar presents questions about the current state of TVA's compliance with NRC requirements. In her January 30th letter, Petitioner listed the deviations from SSERs 15,[3] 16, and 18.[4] These deviations are associated with radiation monitors, other instruments, and fire protection.

On the basis of these assertions, Petitioner sought a full review of the entire Watts Bar licensing process, and suspension or revocation of the Watts Bar license until the review is completed.

By letter dated February 7, 1996, I acknowledged receipt of the Petition, and denied Petitioner's request for immediate suspension or revocation of the low-power license. By letter dated March 7, 1996, the NRC staff informed Petitioner that the full-power license for Watts Bar was issued on February 7, 1996. The full-power license superseded the low-power license which Petitioner requested be suspended or revoked. However, the NRC staff indicated that it would continue its review of the Petition and would take whatever action would be appropriate, including suspension or revocation of the full-power license, if warranted. The NRC staff also advised Petitioner that the information previously provided with respect to the issues on MIC and security was insufficient to permit evaluation and that additional information would be needed to enable these matters to be considered pursuant to 10 CFR 2.206. Petitioner has not provided any additional information on these issues so these issues will not be further considered herein.[5]

By letter dated April 3, 1996, the NRC staff informed Petitioner that the NRC did not intend to hold an informal public hearing regarding this Petition.

By letter dated March 7, 1996, the NRC staff requested that TVA respond to the NRC, addressing points raised in the Petition. TVA responded by letter dated April 8, 1996.

I have completed my evaluation of the Petition. As explained below, Petitioner has failed to provide a basis to warrant a review of the Watts Bar licensing process and has failed to raise any safety concerns that would warrant suspension or revocation of the operating license for Watts Bar. Thus, Petitioner's request is denied.

II. Background

On September 27, 1976, TVA submitted an application for an operating license for Watts Bar, including a Final Safety Analysis Report (FSAR) which described the design,

[1] Supplement 16, Safety Evaluation Report related to the operation of Watts Bar Nuclear Plant, Units 1 and 2 (Docket Nos. 50–390 and 50–391), September 1995. NUREG–0847.

[2] Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, LWR Edition, July 1981. NUREG–0800 (formerly issued as NUREG–75/087).

[3] Supplement 15, Safety Evaluation Report related to the operation of Watts Bar Nuclear Plant, Units 1 and 2 (Docket Nos. 50–390 and 50–391), June 1995. NUREG–0847.

[4] Supplement 18, Safety Evaluation Report related to the operation of Watts Bar Nuclear Plant, Units 1 and 2 (Docket Nos. 50–390 and 50–391), October 1995. NUREG–0847.

[5] In her Petition, Petitioner noted that she had requested that the NRC's Office of Inspector General (IG) act as a vehicle regarding certain security issues. In late 1995, prior to submitting her Petition, Petitioner assisted the IG in pursuing security concerns. The IG forwarded information regarding the concerns to the NRC staff. The NRC staff evaluated the concerns in accordance with Management Directive 8.8, ''Management of Allegations'' and concluded that no NRC action was warranted.

construction, testing and operation of the plant. The NRC staff conducted an extensive review of TVA's application. The results of the review were documented in a Safety Evaluation Report[6] (SER). TVA subsequently submitted 90 amendments to the FSAR which the NRC staff reviewed. The NRC staff thereafter issued 20 supplements to the SER documenting the results of this review. In addition, the staff inspected various aspects of the design, construction, and testing of Watts Bar, and documented the results in inspection reports. On November 9, 1995, the NRC staff issued a low-power operating license for Watts Bar Unit 1, which allowed TVA to load fuel and operate the plant up to a maximum power level of 5 percent. On January 30, 1996, the NRC staff, and TVA attended the NRC Commission meeting to discuss TVA's readiness to operate Watts Bar Unit 1 up to rated power. The Commission subsequently authorized the NRC staff to issue a full-power operating license for Watts Bar Unit 1. The full-power license was issued on February 7, 1996.

Toward the end of the Watts Bar licensing review and before the submittal of the Petition, the NRC staff had extensive contact with Petitioner concerning various issues associated with Watts Bar. By letters dated July 27, August 22, and December 20, 1995, Petitioner raised issues associated with Watts Bar, including public participation in the Watts Bar licensing process and decommissioning cost associated with Watts Bar. By letters dated August 17 and September 5, 1995, the NRC staff responded to various issues raised by her. In addition, the NRC staff conducted frequent conference calls with Petitioner to gain a better understanding of the issues of concern to her, and to explain the results of the NRC staff's ongoing assessment of these concerns.

III. Discussion

A. Open Inspection Issues

Petitioner refers to a letter from Stewart D. Ebneter, Regional Administrator, NRC Region II to TVA dated November 3, 1995. Specifically, Petitioner cites the following language from that letter:

> The problems and schedules resulted in System 90 [the radiation monitoring system] being the last of the major systems to be completed and turned over to the operating staff and there were several issues still open when TVA submitted the letter to NRC requesting the operating license.

Petitioner contends that the fact that Mr. Ebneter acknowledges open issues associated with the radiation monitoring system brings into question the conclusion by the NRC staff in SSER 16 that, ''the process and effluent radiological monitoring and sampling system for Watts Bar Unit 1 complies with 10 CFR 20.1302 and General Design Criteria (GDC) 60, 63, and 64.''

The NRC staff's evaluation of the process and effluent radiological monitoring and sampling system is described in Section 11.5 of SSER 16. The conclusion in SSER 16 addresses the system as described by TVA in the FSAR. The adequacy of implementation is reviewed by NRC inspectors, and the results are documented in inspection reports. This is generally an effort for which the NRC regional office has responsibility. As implementation proceeds, it is not uncommon for inspectors to identify open issues associated with implementation that must be addressed by a licensee. For example, there was an issue regarding training of TVA personnel on the operation of the radiation monitoring system at Watts Bar. This issue was identified as an open issue during an inspection in November 1995. TVA agreed to complete the training prior to initial criticality. The training was subsequently conducted, and the open issue was closed by the NRC in January 1996. Thus, the open issues referred to in Mr. Ebneter's letter dated November 3, 1995, are part of the normal NRC licensing process, and do not raise questions about the conclusions in SSER 16.

In January 1996, the NRC conducted a special inspection of the radiation monitors at Watts Bar (see NRC Inspection Report 50–390/96–01). The inspection focused on the technical issues raised by Petitioner. The inspection concluded that selected effluent monitors and post accident radiation monitors at Watts Bar had been calibrated and installed in accordance with the TVA's commitments, and the installation met NRC requirements.

In SSER 16, the NRC staff concluded that design and testing requirements for the process and effluent radiological monitoring and sampling system for Watts Bar Unit 1 complied with 10 CFR 20.1302 and GDCs 60, 63, and 64. In addition, the staff conducted numerous inspections of the radiation monitoring system at Watts Bar. Open issues were identified and resolved to the satisfaction of the NRC staff before licensing, enabling the NRC staff to conclude that the installation and testing of the radiation monitoring system at Watts Bar met NRC requirements.

B. Regulatory Requirements and Licensee Commitments

Petitioner contends that the NRC staff was not fully aware of TVA's commitments and TVA's adherence to those commitments when the NRC issued the low-power license for Watts Bar. Petitioner further asserts that the lack of understanding resulted from a lack of adherence to NRC procedures or ''misinformation'' provided by TVA, or a combination of both. Petitioner bases this assertion on NRC documents, including SSER 16. Petitioner quotes the following from SSER 16:

> On the basis of its review, the staff concludes that the process and effluent radiological monitoring and sampling system for Watts Bar Unit 1 complies with 10 CFR 20.1302 and GDCs 60, 63, and 64. The staff also concludes that the system design conforms to the guidelines of NUREG–0737...Item II.F.1...RGs 1.21 and 4.15, and applicable guidelines of RG 1.97. Thus, the system meets the acceptance criteria of SRP Section 11.5 and is, therefore, acceptable.

Petitioner contends that TVA did not implement specific guidelines in Regulatory Guide (RG) 4.15[7] and ANSI N13.10[8] at Watts Bar, and that there is no indication that the NRC staff approved deviations from these guidelines.

RG 4.15 describes a method acceptable to the NRC staff for designing a program to assure the quality of the results of measurements of radioactive material in the effluents and environment outside of nuclear facilities during normal operation. ANSI N13.10 is an industry standard which provides guidance for instrumentation used to continuously monitor radioactive effluents.

Petitioner also contends that RG 1.21[9] and ANSI N13.1[10] have not been met at Watts Bar. RG 1.21 provides methods acceptable to the NRC staff for measuring and reporting radioactivity in effluents from nuclear power plants.

[6] Safety Evaluation Report related to the operation of Watts Bar Nuclear Plant, Units 1 and 2 (Docket Nos. 50–390 and 50–391), June 1982. NUREG–0847.

[7] Regulatory Guide 4.15, Revision 1, Quality Assurance for Radiological Monitoring Programs (Normal Operations)—Effluent Streams and the Environment, February 1979.

[8] ANSI N13.10–1974, Specification and Performance of On-Site Instrumentation for Continuously Monitoring Radioactivity in Effluents.

[9] Regulatory Guide 1.21, Revision 1, Measuring, Evaluating, and Reporting Radioactivity in Solid Wastes and Releases of Radioactive Materials in Liquid and Gaseous Effluents for Light-Water-Cooled Nuclear Power Plants, June 1974.

[10] ANSI N13.1–1969, Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities.

ANSI N13.1 is an industry standard which provides guidance for sampling airborne radioactivity in nuclear facilities.

The requirements that must be met before a plant can be licensed are defined in NRC regulations, including the General Design Criteria in 10 CFR Part 50, Appendix A. General Design Criteria (GDCs) 60, 63, and 64, address the radiation monitoring systems.

Over the years, the NRC staff has prepared a number of guidance documents, such as Regulatory Guides, that describe methods which are acceptable to the staff for meeting the requirements in the regulations. However, except for a few Regulatory Guides that are specifically referenced in a regulation or referenced in or incorporated into a license, these documents do not constitute requirements. RG 4.15 contains the following statement:

> Regulatory Guides are issued to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations, to delineate techniques used by the staff in evaluating specific problems or postulated accidents, or to provide guidance to applicants. Regulatory Guides are not substitutes for regulations, and compliance with them is not required.

In addition, the industry has developed many documents, such as ANSI Standards, in which methods are described for meeting certain requirements contained in the regulations. To varying degrees, the NRC staff has endorsed these documents as providing acceptable methods for meeting the regulations. But again, adherence to these guidance documents is not mandatory.

As an applicant develops the design of a system such as the radiation monitoring system, it may chose to ''commit'' to one or more of these NRC or industry reference documents. If an applicant commits to a document, then it should satisfy the guidelines contained in the document or request authorization from the NRC staff for a ''deviation.'' The NRC staff specifically approves or denies each deviation requested.

However, an applicant may choose not to commit to a specific document, but may instead choose an alternative approach to meeting a regulatory requirement. When an applicant chooses to do this, the NRC staff must evaluate the alternative approach to determine if it meets the regulation. The design of each nuclear power plant, including commitments and alternative approaches, is described in the FSAR specific to each plant and prepared by the applicant, and submitted to the NRC for review.

The NRC staff's review of an application is guided by the Standard Review Plan (NUREG–0800). However, like Regulatory Guides, the Standard Review Plan imposes no requirements. Each section of the Standard Review Plan contains the following statement, ''Standard review plans are not substitutes for regulatory guides or the Commission's regulations and compliance with them is not required.''

As the NRC staff reviews an application, the reviewer will often use the guidelines contained in a Regulatory Guide or ANSI standard as a measure of whether the application complies with the regulations. In such cases, the reviewer will often attempt to determine whether the application satisfies the intent of the guidelines in a Regulatory Guide or ANSI standard. This does not mean that the Regulatory Guide or ANSI standard becomes a requirement or a commitment, and it does not mean that the application must meet every guideline in the standard to be found acceptable.

The radiation monitoring system at Watts Bar must comply with GDCs 60, 63, and 64. In addition, TVA has committed to Regulatory Guides 1.21, 1.68 (Revision 2),[11] and 1.97 (Revision 2)[12] which address, at least in part, the radiation monitoring system.[13] More importantly in the context of this Petition, TVA has specifically stated that it is not committed to RG 4.15.

Petitioner asserts that the statement in SSER 16 quoted above commits TVA to comply with RG 4.15. Petitioner further asserts that this assumed commitment requires that TVA also meet all of the guidelines contained in ANSI N13.10 because ANSI N13.10 is referenced in RG 4.15. Petitioner contends that, if any guideline in RG 4.15 or ANSI N13.10 is not met, TVA must submit a request for a deviation to the NRC staff for approval.

These assertions are in error for the following two reasons.

First, TVA has explicitly stated in a letter dated July 21, 1995 (referenced on page 11–1 of SSER 16), that it is not committed to RG 4.15, although TVA noted that Watts Bar ''generally agrees with and satisfies the intent of RG 4.15 * * *.'' Accordingly, the TVA application was not reviewed to assure adherence to RG 4.15. Rather, the application was reviewed to assure that regulatory requirements and guidance to which TVA did commit were satisfied. On page 11–28 of SSER 16, the NRC staff states: ''The staff finds that the radiation monitoring system for Watts Bar Unit 1 meets the intent and purpose of RG 4.15, with respect to quality assurance provisions for the system.'' This statement in SSER 16 is an acknowledgement of and agreement with TVA's statement that Watts Bar generally meets the intent of RG 4.15. However, the NRC staff did not review Watts Bar to the standards of RG 4.15, and strict adherence to RG 4.15 was not required.

Second, even if TVA were committed to RG 4.15, that would not commit TVA to ANSI N13.10 merely because it is referenced in RG 4.15. RG 4.15 specifically states:

> Guidance on principles and good practices in the monitoring process itself and guidance on activities that can effect [sic] the quality of monitoring results * * * are outside the scope of this guide. However, some references are provided to documents that do provide some guidance in these areas [43 separate references are cited in the guide]. The citation of these references does not constitute an endorsement of all of the guidance in these documents by the NRC staff. Rather, these references are provided as sources of information to aid the licensee * * *.

Petitioner identifies three technical issues as a basis for the assertion that ANSI N13.10 was not met. As described above, TVA is not required to meet ANSI N13.10. The NRC staff has reviewed the radiation monitoring system and inspected its implementation. The system satisfies NRC requirements.

Thus, RG 4.15 and ANSI N13.10, which Petitioner contends were not implemented at Watts Bar, are not commitments, and TVA was not required to implement these guidelines or to request deviations from them. TVA documented the fact that it was not committed to RG 4.15, and the NRC staff was aware of this, as is indicated by the language referred to above from SSER 16.

The NRC staff acknowledges that the language in SSER 16 that Watts Bar ''conforms'' to RG 4.15 could cause confusion. Accordingly, the NRC staff attempted to clarify in SSER 20[14] the

[11] Regulatory Guide 1.68, Revision 2, Initial Test Program for Water-Cooled Reactor Power Plants, August 1978.

[12] Regulatory Guide 1.97, Revision 2, Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant Conditions During and Following an Accident, December 1980.

[13] Although Petitioner contends that TVA has not satisfied RG 1.21 and ANSI N13.1, Petitioner provides no basis for this assertion. In fact, the NRC staff has determined that Watts Bar satisfies RG 1.21. TVA has not committed to meet ANSI N13.1 and there is no requirement that it do so.

[14] Supplement 20, Safety Evaluation Report related to the operation of Watts Bar Nuclear Plant,

Continued

conclusion reached in SSER 16. In SSER 20, the NRC staff explicitly acknowledged that TVA was not committed to RG 4.15, ANSI N13.1, or ANSI N13.10. The NRC staff clarified that Watts Bar meets the intent of RG 4.15 with respect to quality assurance provisions for the radiation monitoring system. The NRC staff revised the statement in SSER 16 cited above to read:

The staff also concludes that the system design conforms to the guidelines of NUREG–0737 (TMI Action Plan II.F.1, Attachment 1 and 2), RG 1.21, and applicable guidelines of RG 1.97 (Revision 2). The staff further concludes that the system design meets the intent and purpose of RG 4.15.

As stated in SSER 20, the NRC staff has concluded that the radiation monitoring system at Watts Bar meets the ''intent and purpose'' of RG 4.15. The intent and purpose of RG 4.15 is to provide an acceptable method to comply with applicable NRC requirements. However, as discussed above, alternatives to RG 4.15 may also be found to be acceptable in meeting this intent and purpose of RG 4.15 (i.e., compliance with applicable NRC requirements). In its review of Watts Bar, the NRC staff has concluded that applicable NRC requirements have been satisfied while not necessarily conforming to all the details of RG 4.15. Thus, although the staff's conclusion in SSERs 16 and 20 could have been clearer, as explained above, TVA did not commit to RG 4.15. For these same reasons, Petitioner's assertions provide no basis to conclude that TVA provided ''misinformation'' in this area. Rather, the NRC staff properly evaluated the radiation monitoring system at Watts Bar and correctly determined that the applicable regulatory requirements were satisfied prior to licensing.

C. Deviations From Regulatory Guides

By letter dated January 30, 1996, Petitioner submitted a list of deviations from Regulatory Guides that Petitioner extracted from the Watts Bar SER and supplements. Petitioner questioned whether an overall review of the aggregate effect of the deviations had been performed for Watts Bar.

Each deviation is reviewed by the NRC staff and, if found to be acceptable, is approved in an SER. It should be noted that a deviation is an alternative. Approval of a deviation does not suggest that a lesser safety standard has been applied. The NRC staff reviews each program area described in the FSAR, and related regulatory documents to ensure that the program complies with regulatory requirements. That review includes an assessment of the impact of any deviations requested by a Licensee. Thus, the integrated impact of any requested deviations on a program is considered as part of the review of that program.

Accordingly, the concern raised by Petitioner regarding the overall effect of the deviations approved at Watts Bar has not raised a safety issue that would warrant suspension or revocation of the operating license for Watts Bar.

Accordingly, Petitioner has not provided a basis to warrant a review of the Watts Bar licensing process, nor has Petitioner identified a safety concern that would warrant suspension or revocation of the operating license for Watts Bar.

IV. CONCLUSION

The institution of proceedings in accordance with 10 CFR 2.206, as requested by Petitioner, is appropriate only where substantial safety issues have been raised. See Consolidated Edison Company of New York (Indian Point Units 1, 2 and 3), CLI–75–8, 2 NRC 173, 175 (1975), and *Washington Public Power System* (WPPS Nuclear Project No. 2), DD–84–7, 19 NRC 899, 923 (1984). This is the standard I have applied to the Petition. Petitioner has not raised any substantial safety concerns with regard to Watts Bar. Therefore, Petitioner's request to revoke or suspend the operating license for Watts Bar is denied.

A copy of this Decision will also be filed with the Secretary for the Commission's review as provided in 10 CFR 2.206(c) of the Commission's regulations.

As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 15th day of August 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–21285 Filed 8–20–96; 8:45 am]

BILLING CODE 7590–01–P

Units 1 and 2 (Docket Nos. 50–390 and 50–391), February 1996. NUREG–0847.

OFFICE OF MANAGEMENT AND BUDGET

Budget Analysis Branch; Sequestration Update Report

AGENCY: Budget Analysis Branch, Office of Management and Budget.

ACTION: Notice of Transmittal of Sequestration Update Report to the President and Congress.

SUMMARY: Pursuant to Section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Sequestration Update Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

FOR FURTHER INFORMATION CONTACT: Anita Chellaraj, Budget Analysis Branch—202/395–3674.

Dated: August 13, 1996.

John B. Arthur,

Associate Director for Administration.

[FR Doc. 96–21135 Filed 8–20–96; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22146; 34–37578; 812–10072]

Allied Capital Lending Corporation, et al.; Notice of Application

August 15, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the ''Act'') and the Securities Exchange Act of 1934 (the ''Exchange Act'').

APPLICANTS: Allied Capital Lending Corporation (''Lending''), Allied Capital Advisers, Inc. (''Advisers''), Allied Capital SBLC Corporation (''Subsidiary I''), and Allied Capital Credit Corporation (''Subsidiary II,'' and with Subsidiary I, the ''Subsidiaries'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 12(d)(1), 18(a), 55(a), 60 and 61(a) of the Act, under section 57(c) of the Act for an exemption from sections 57(a) (1), (2), and (3) of the Act, and under sections 57(a)(4) and 57(i) of the Act and rule 17d–1 thereunder permitting certain joint transactions. Order also requested under section 12(h) of the Exchange Act for an exemption from section 13(a) of the Exchange Act.

SUMMARY OF APPLICATION: Applicants request an order to permit Lending to form two new subsidiaries and engage in certain joint transactions with such new subsidiaries or certain companies in which Lending or its subsidiaries have invested. The order also would permit modified asset coverage

requirements for Subsidiary I individually and Lending and its subsidiaries on a consolidated basis. In addition, the order would deem the capital stock of the Subsidiaries to be securities issued by eligible portfolio companies for purposes of characterizing assets under section 55(a) of the Act. Furthermore, the order would permit Lending and its subsidiaries to file Exchange Act reports on a consolidated basis.

FILING DATES: The application was filed on April 2, 1996 and amended on May 21, 1996, July 16, 1996, and August 14, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 9, 1996, and should be accompanied by proof of service on applicant 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, c/o Allied Capital Advisers, Inc., 1666 K Street, N.W., 9th Floor, Washington, D.C. 20006–2803.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Special Counsel, at (202) 942–0563, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

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. Lending is a registered closed-end management investment company that has elected to be regulated as a business development company (a ''BDC'') and has been approved by the Small Business Administration (the ''SBA'') to participate as a small business lending company (a ''SBLC'') in the SBA's guaranteed loan program (the ''7(a) Loan Program'') pursuant to section 7(a) of the Small Business Administration Act of 1958 (the ''Small Business Act''). As an SBLC, Lending makes loans (the ''7(a) Loans'') that are partially guaranteed by the SBA.

2. Until November 23, 1993, Lending was a wholly-owned subsidiary of Allied Capital Corporation (''Allied I''). On that date, the initial public offering of Lending's shares commenced. In 1993, the SEC issued an order (the ''1993 Order'') permitting Allied I and Lending to engage in certain joint transactions in connection with the initial public offering.[1] Currently, Allied I owns 28.3% of the issued and outstanding shares of Lending. Pursuant to a condition of the 1993 Order, Allied I has agreed to divest itself of all its remaining shares of Lending by December 31, 1998.

3. Advisers is a registered investment adviser. Until December 31, 1990, Advisers was a wholly-owned subsidiary of Allied I. On that date, Allied I distributed all the shares of Advisers to Allied I's shareholders. Advisers currently acts as investment adviser to Lending and Allied I as well as to one other BDC, two real estate investment trusts, and two venture capital limited partnerships. Advisers may have investment advisory agreements with the Subsidiaries in the future. The investments of these entities consist largely of loans to and investments in small, privately owned businesses.

4. The ACLC Limited Partnership (the ''Limited Partnership'') participates in the SBA's Certified Development Company Program (the ''504 Loan Program;'' loans generated thereunder are the ''504 Loans'') and generates supplemental loans, not guaranteed by the SBA, to accompany Lending's 7(a) Loans (the ''7(a) Companion Loans''). Because SBA regulations prevent Lending, as an SBLC, from making these loans, Lending formed the Limited Partnership, retaining 99% ownership and acting as general partner, to generate 504 Loans and 7(a) Companion Loans without violating such regulations.

5. Each Subsidiary is a closed-end management investment company, and each intends to file an election to be regulated as a BDC. Each Subsidiary will be a wholly-owned subsidiary of Lending following the proposed reorganization of Lending and the Limited Partnership into a parent with two corporate subsidiaries structure (the ''Reorganization''). Subsidiary I will become an SBLC and, as such, will participate in the 7(a) Loan Program. Subsidiary II will participate in the 504 Loan Program and will generate 7(a) Companion Loans, as well as other non-SBA guaranteed loans.[2]

6. The 7(a) Loan Program provides funds to small businesses for almost any legitimate business purpose. The 504 Loan Program provides long-term financing, partially guaranteed by the SBA, of fixed assets. The 504 Loan Program is more restrictive than the 7(a) Loan Program because 504 Loans must be secured by a purchase money mortgage on the fixed assets of the borrower. The 504 Loan Program is administered through certified development companies (the ''CDCs''), which are licensed by the SBA. CDCs are non-profit organizations that can be sponsored either by private interests or by state and local governments. A loan in the 504 Loan Program requires the participation of a private lender, such as the Limited Partnership, a CDC, and a qualified small business. The CDC, through the SBA, provides a second mortgage, and the private lender provides the first mortgage.

7. The SBLC regulations, as revised as of March 1, 1996, prohibit an SBLC from participating in loans other than under the 7(a) Loan Program. Therefore, Lending proposes to transfer all or substantially all its assets (except its ownership interests in the Limited Partnership), including its SBLC license, and liabilities to Subsidiary I as a capital contribution in exchange for 100% of Subsidiary I's common stock. Lending also proposes to transfer all its ownership interests in the Limited Partnership to Subsidiary II as a capital contribution in exchange for 100% of Subsidiary II's common stock and to cause Subsidiary II to purchase the remaining 1% limited partnership interest from the owner thereof and to cause the dissolution and winding up of the Limited Partnership, which will entail the transfer of all the Limited Partnership's assets and liabilities to Subsidiary II.

8. Subsidiary I and Subsidiary II will in effect succeed to the current operations of Lending and the Limited Partnership, respectively, following the Reorganization. Subsidiary I will become an SBLC and will participate as such in the 7(a) Loan Program, and Subsidiary II will generate 7(a) Companion Loans and will participate in the 504 Loan Program. Lending will not directly participate in any SBA-guaranteed loan programs under the proposed structure, although it will maintain ownership of the Subsidiaries

[1] *Allied Capital Corporation,* Investment Company Act Release Nos. 19810 (Oct. 22, 1993) (notice) and 19880 (Nov. 17, 1993) (order).

[2] The SBLC program was closed to new applicants in 1982, but Lending may transfer its SBLC license to Subsidiary I with the consent of the SBA.

and will raise capital to finance the Subsidiaries as needed as well as its own non-SBA guaranteed lending activities.

9. One or both of the Subsidiaries may enter into an investment advisory agreement with Advisers. Upon the effectiveness of such an investment advisory agreement, Advisers will not collect any fee to which it may otherwise be entitled under its investment advisory agreement with Lending with respect to the portion of Lending's assets represented by the value of Lending's continuing investment in that Subsidiary.

Applicants' Legal Analysis

Section 6(c)

1. Applicants request relief under section 6(c) of the Act from sections 12(d)(1), 18(a), 55(a), 60, and 61(a). Section 6(c) authorizes the SEC to exempt any person, security, or transaction from any provision of the Act if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Since each Subsidiary will be wholly-owned by Lending, any activity carried on by it will have the same economic effect on Lending shareholders as it would if carried on directly by Lending. Applicants believe that the public interest will not be harmed by the granting of the requested exemptions, while the interest of Lending and its shareholders will be enhanced.

Sections 12(d)(1) and 60

1. Section 12(d)(1) makes it unlawful for any registered investment company to purchase or otherwise acquire any security issued by any other investment company and for any investment company to purchase or otherwise acquire any security issued by any registered investment company, if the acquiring company immediately after such purchase or acquisition owns more than the amounts of securities specified in that section. Section 60 makes section 12 applicable to a BDC to the same extent as if it were a closed-end management investment company registered under the Act.

2. The purchase of voting stock in a Subsidiary by Lending, both pursuant to the Reorganization and thereafter, would violate section 12. Similarly, a subsequent contribution to capital of a Subsidiary by Lending might be deemed to violate section 12 to the extent such contribution otherwise constitutes the acquisition of a security issued by the Subsidiary. In addition, the making of loans or advances by Lending or a Subsidiary (a ''Fund'') as lender, to another Fund, as borrower, might be deemed to violate section 12 if such loans or advances were viewed as purchases by the lender of the securities of the borrower.

3. Accordingly, applicants request an order exempting the acquisition by Lending of any securities of either Subsidiary and the acquisition by either Subsidiary of any securities representing indebtedness of Lending, to the extent that such transactions would not be prohibited if each Subsidiary were deemed to be part of Lending and not a separate company, from section 12(d)(1).

Sections 18(a) and 61(a)

1. Section 18(a) makes it unlawful for any closed-end company to issue any class of senior security unless such company complies with the asset coverage set forth in that section. ''Asset coverage'' is defined in section 18(h) to mean the ratio which the value of the total assets of the issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of such issuer. Section 18(k) makes certain of the asset coverage requirements of section 18(a) inapplicable to investment companies operating under the Small Business Investment Act of 1958 (the ''1958 Act''). Section 61(a) makes section 18 applicable, with certain modifications, to a BDC to the same extent as if it were a closed-end company registered under the Act.

2. Applicants believe that a question exists as to whether Subsidiary I may rely on section 18(k) to be excepted from the asset coverage and other requirements of section 18(a), as modified by section 61(a). As the successor to Lending's SBLC license upon consummation of the Reorganization, Subsidiary I will be an investment company operating under the 1958 Act to the extent that Title V of the 1958 Act authorizes and sets forth the United States government guarantee of the 7(a) Loans, an essential part of an SBLC's business. The statutory authority for the 7(a) Loan Program itself is contained, however, within the Small Business Act, which is technically distinct from, although codified in large part together with, the 1958 Act cited in section 18(k) of the Act.

3. Applicants believe that the rationale for the exemption contained in section 18(k) is that the SBA's substantive regulation of permissible leverage of an SBA-licensed investment company is an effective substitute for the SEC's substantive regulation of required asset coverage for each class of senior security issued by a registered closed-end company or a BDC. As both SBICs and SBLCs are SBA-licensed investment companies, both types of entities are subject to the SBA's substantive regulation of permissible leverage in their capital structure. An SBIC with outstanding ''Leverage'' may not incur any secured third-party debt or refinance any debt with secured third-party debt without prior written approval of the SBA if the SBIC's ''Leverage'' exceeds, and if the SBIC's total outstanding borrowings (not including ''Leverage'') would exceed, specified percentages of its ''Leverageable Capital''.[3] An SBLC may not issue any securities (including debt securities) without prior written approval of the SBA.[4] Applicants believe that an SBLC is subject to more restrictive capital structure regulation by the SBA than an SBIC is because the issuance of all debt securities is regulated by the SBA in the case of an SBLC, while only secured third-party debt is regulated in the case of an SBIC.

4. Applicants wish to avoid any questions about their compliance with section 18(a), as modified by section 61(a). Accordingly, applicants request an exemption from sections 18(a) and 61(a) to treat borrowings by Subsidiary I as liabilities and indebtedness not represented by senior securities in applying the asset coverage requirements of section 18(a), as modified by section 61(a), to Subsidiary I individually and to Lending and the Subsidiaries on a consolidated basis.

Section 55(a)

1. Section 55(a) makes it unlawful for a BDC to acquire any assets (with certain exceptions) unless, at the time the acquisition is made, assets described in paragraphs (1) through (6) thereof (''Qualifying Assets'') represent at least 70 percent of the value of its total assets other than assets described in paragraph (7) thereof. Paragraphs (1) through (4) of section 55(a) describe Qualifying Assets which are either securities of an eligible portfolio company within the meaning of section 2(a)(46) or securities of an issuer described in subparagraphs (A) and (B) of section 2(a)(46), but which may not be an eligible portfolio company (*i.e.*, may not satisfy one of the three alternative criteria of subparagraph (C) of section 2(a)(46)). Subparagraph (B) of section 2(a)(46)

[3] *See* 15 C.F.R. § 107.550(b) (1996).

[4] *See* 15 C.F.R. § 120.470(b)(5) (1996).

disqualifies from the definition of eligible portfolio company both an investment company as defined in section 3 (with the exception of one category of such companies) and a company which would be an investment company except for the exclusion from the definition of investment company in section 3(c). The exception from this disqualification applies to ''a small business investment company'' licensed by the SBA to operate under the 1958 Act that is a wholly owned subsidiary of a BDC.

2. Applicants believe that a literal reading of section 2(a)(46)(B) would seem to disqualify from the definition of eligible portfolio company both Subsidiary I and Subsidiary II. Thus, applicants believe that Lending's holdings of the common stock of the Subsidiaries may be ineligible to be counted as Qualifying Assets toward the 70 percent requirement under the descriptions of paragraphs (1) through (6) of section 55(a).

3. Applicants believe that if the Subsidiaries themselves are deemed to be ''eligible portfolio companies'' within the meaning of section 2(a)(46) for purposes of section 55(a), the public interest would be served. The 7(a) Loans to be made by Subsidiary I, as well as the related loans (*e.g.*, 7(a) Companion Loans and 504 Related Loans) or other investments to be made by Subsidiary II, will be made to the same category of small business borrowers which represent the type of persons that the BDC amendments to the Act, adopted in 1980, which added sections 54 through 65 (the ''1980 Amendments'') were designed to benefit. Because both Subsidiaries not only will be BDCs but also will lend to, or otherwise invest in, solely those small business borrowers that meet one or more of the maximum size standards established by the SBA for the 7(a) Loan Program, the 504 Loan Program, or SBIC investments, applicants believe that no harm to the public interest will occur if Lending's investment in each of the Subsidiaries is deemed to be a Qualifying Asset.

4. Accordingly, applicants request an exemption from section 55(a) to treat the securities issued by the Subsidiaries held by Lending as securities purchased from ''eligible portfolio companies'' within the meaning of section 2(a)(46) for purposes of classifying such securities as assets of the type described in section 55(a)(1)(A).

Section 57(c)

1. Section 57(c) directs the SEC to exempt a transaction from sections 57(a) (1), (2), or (3) if the following standards are met: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching of the BDC or its shareholders on the part of any person concerned, (b) the proposed transaction is consistent with the policy of the BDC as recited in its filings with the SEC and in its reports to shareholders, and (c) the proposed transaction is consistent with the general purposes of the Act.

2. Applicants believe that the contemplated transactions will be reasonable and fair and will not involve overreaching on the part of any person, the proposed operation of the Funds as one company and the requested relief are consistent with the policy outlined in the information to be provided in Lending's regular reporting to shareholders, and the proposed operation of the Funds as one company and the requested relief is entirely consistent with the general purposes of the Act. Accordingly, applicants believe the standard set forth in section 57(c) are met.

Sections 57(a) (1), (2), and (3)

1. Sections 57(a) (1), (2), and (3) generally prohibit, with certain exceptions, sales or purchases of securities between BDCs and certain of their affiliates, including any director, officer, employee, or member of an advisory board of the BDC or any person who controls, is controlled by, or is under common control with such director, officer, employee, or advisory board member.

2. Lending will be a related person (within the meaning of section 57(b)) of each Subsidiary as long as it continues to own more than 25 percent of the voting securities of, or otherwise controls, such Subsidiary. Each Subsidiary will be a related person of Lending as long as it remains controlled by Lending. The Subsidiaries will be related persons of each other as long as they remain under the common control of Lending.

3. The acquisition by Lending of the capital stock of the Subsidiaries in exchange for part of Lending's investment portfolio could be deemed: (a) a sale of a security of a BDC (the Subsidiary's stock) to a BDC (Lending), (b) a sale of a security (from Lending's investment portfolio) to a BDC (the Subsidiary), (c) a purchase from a BDC (the Subsidiary) of any security (the Subsidiary's stock), and (d) a purchase from a BDC (Lending) of any security (from Lending's investment portfolio) by a BDC affiliate (the Subsidiary). In addition, loan transactions between Funds may be effected which may be deemed to be purchases and sales of securities representing indebtedness. While loans from Lending to a Subsidiary appear to be exempt from section 57(a) by virtue of rule 57b–1 because each Subsidiary (the borrower) would be controlled by Lending (the lender), it does not appear that loans from either Subsidiary to Lending would be entitled to the exemptions contained in rule 57b–1, since, in that case, the lender would be controlled by the borrower.

4. Therefore, applicants believe, absent an exemptive order, any loan from either Subsidiary to Lending could be deemed in violation of section 57(a). In addition, a Subsidiary may invest in securities of an issuer that may be deemed to be an affiliate of Lending or Lending may invest in securities of an issuer that may be deemed to be an affiliate of a Subsidiary, as in the case of a portfolio company deemed to be affiliated with Lending or a Subsidiary as a result of its ownership of 5% or more of the portfolio company's stock. Accordingly, applicants request an order exempting from sections 57(a) (1), (2), and (3) any transaction between the Funds with respect to the purchase or sale of securities or other property or the borrowing of any money or other property. Applicants also request an order exempting from sections 57(a) (1), (2), and (3) any transaction involving the Funds and portfolio affiliates of the Funds, but only to the extent that any such transactions would not be prohibited if a Subsidiary involved in the transaction were deemed to be part of Lending and not a separate company.

Section 57(a)(4) and Rule 17d–1

1. Section 57(a)(4) makes it unlawful for certain persons related to a BDC in the manner set forth in section 57(b), acting as principal, knowingly to effect any transaction in which the BDC or a company controlled by the BDC is a joint or joint and several participant with that person in contravention of such rules and regulations as the SEC may prescribe. Section 57(i) states that the rules and regulations under sections 17(a) and 17(d) applicable to registered closed-end investment companies (*e.g.*, rule 17d–1) shall be deemed to apply to transactions subject to section 57(a) until the adoption by the SEC of rules and regulations under section 57(a).

2. Lending and the Subsidiaries are related persons (within the meaning of sections 57(b)) of one another, based on their control relationships. The joint transaction prohibitions of section 57(a)(4) and rule 17d–1 therefore apply to all the Funds as long as Lending continues to own more than 25 percent of the voting securities of, or otherwise controls, each Subsidiary. The

participation of two or more of the Funds in a co-investment transaction with a portfolio company may be deemed to be a participation by each of them in a joint or joint-and-several transaction with the other.

3. Accordingly, applicants request an order permitting, under section 57(a)(4) and rule 17d–1, any transaction involving investments by a Fund in portfolio companies in which any other Fund is or is proposed to become an investor, but only to the extent that such transaction would not be prohibited if a Subsidiary involved in the transaction (and all of its assets and liabilities) was deemed to be part of Lending, and not a separate company.

Sections 12(h) and 13 of the Exchange Act

1. Section 12(h) of the Exchange Act provides that the SEC may exempt an issuer from section 13 of the Exchange Act if the SEC finds that by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise that such action is not inconsistent with the public interest or the protection of investors. Section 13 of the Exchange Act is the primary section requiring filing of periodic reports.

2. Lending has elected to be regulated as a BDC and has securities registered under section 12 of the Exchange Act. In order to be a BDC, the Subsidiaries must register a class of equity securities under section 12(g) of the Exchange Act or have filed a registration statement to do so. Absent an exemptive order, such registration would subject each Subsidiary to periodic filings with the SEC even though each Subsidiary will have only one equity holder. Accordingly, applicants request an order under section 12(h) of the Exchange Act exempting each Subsidiary from the reporting requirements of section 13(a) of the Exchange Act.

Applicants' Conditions

Applicants agree that any order of the SEC granting the relief required shall be subject to the following conditions:

1. Lending will at all times own and hold, beneficially and of record, all of the outstanding capital stock of the Subsidiaries.

2. Each Subsidiary will have the same fundamental investment policies as Lending, as set forth in Lending's registration statement; the Subsidiaries will not engage in any of the activities described in section 13(a) of the Act, except in each case as authorized by the vote of a majority of the outstanding voting securities of Lending.

3. No person shall serve or act as investment adviser to a Subsidiary under circumstances subject to section 15 of the Act, unless the directors and shareholders of Lending shall have taken the action with respect thereto also required to be taken by the directors and shareholders of the Subsidiary.

4. No person shall serve as a director of a Subsidiary unless elected as a director of Lending at Lending's most recent annual meeting, as contemplated by section 16(a) of the Act and subject to the provisions thereof relating to the filling of vacancies. Notwithstanding the foregoing, the board of directors of each Subsidiary will be elected by Lending as the sole shareholder of that Subsidiary, and such board will be composed of the same persons who serve as directors of Lending.

5. Lending will not itself issue or sell, and Lending will not cause or permit its Subsidiaries to issue or sell, any senior security of which Lending or a Subsidiary is the issuer except as hereinafter set forth. The Funds may issue and sell to banks, insurance companies, and other financial institutions their secured or unsecured promissory notes or other evidences of indebtedness in consideration of any loan, or any extension or renewal thereof made by private arrangement, provided the following conditions are met: (i) such notes or evidences of indebtedness are not intended to be publicly distributed, (ii) such notes or evidences of indebtedness are not convertible into, exchangeable for, or accompanied by any options to acquire any equity security (except that if a Subsidiary is permitted to elect BDC status, these restrictions shall not be applicable to such Subsidiary except to the extent they are applicable generally to BDCs), and (iii) immediately after the issuance or sale of any such notes or evidences of indebtedness by either Lending or the Subsidiaries, Lending and the Subsidiaries, on a consolidated basis, and each Subsidiary and Lending individually, shall have the asset coverage required by section 61(a)(1), except that, in determining whether the Funds, on a consolidated basis, have the asset coverage required by section 61(a)(1), any borrowings by Subsidiary I shall not be considered senior securities and, for purposes of the definition of ''asset coverage'' in section 18(h), shall be treated as indebtedness not represented by senior securities.

6. Subsidiary II will only make loans to, or other investments in, companies that meet one or more of the maximum size standards established by the SBA for the 7(a) Loan Program, the 504 Loan Program, or SBIC investments, although Subsidiary II may make various types of loans (*e.g.*, 7(a) Companion Loans and 504 Related Loans) to, and investments in, these companies.

7. If Advisers enters into an investment advisory agreement with either Subsidiary, Advisers will reduce its fees charged to Lending by an amount equal to the value of such Subsidiary's shares held by Lending times the rate at which advisory or other asset-based fees are charged by Advisers to such Subsidiary.

8. Lending will: (a) file with the SEC on behalf of itself and the Subsidiaries, all information and reports required to be filed with the SEC under the Exchange Act and other federal securities laws, including financial statements prepared solely on a consolidated basis as to Lending and the Subsidiaries, such information and reports to be in satisfaction of the separate filing obligations of each of the Subsidiaries; and (b) provide to its shareholders such information and reports required to be disseminated to Lending's shareholders, including financial statements prepared solely on a consolidated basis as to Lending and the Subsidiaries, such reports to be in satisfaction of the separate filing obligations of Lending and each of the Subsidiaries. Notwithstanding anything in this condition, Lending will not be relieved of any of its reporting obligations including, but not limited to, any consolidating statement setting forth the individual statement of each Subsidiary required by rule 6–03(c) of Regulation S–X.

9. Lending and the Subsidiaries may file on a consolidated basis pursuant to the above condition only so long as the amount of Lending's assets invested in assets other than (a) securities issued by the Subsidiaries or (b) securities similar to those in which the Subsidiaries invest, does not exceed ten percent.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21322 Filed 8–20–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. IC–22143; 811–5520]

Chicago Milwaukee Corporation; Notice of Application

August 15, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Chicago Milwaukee Corporation.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on March 22, 1996 and amended on July 1, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 9, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 547 West Jackson Boulevard, Chicago, Illinois 60661.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney, at (202) 942–0579, or Alison E. Baur, 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 from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company organized as a corporation under the laws of Maryland.

2. On March 22, 1988, applicant registered under the Act as a closed-end, non-diversified management investment company. On May 12, 1993, at a special meeting of the stockholders of applicant, the stockholders approved the conversion of applicant to an open-end, non-diversified management investment company. Applicant filed a notification of registration as an open-end management company on Form N–8A on July 1, 1993. On October 1, 1993, applicant filed a registration statement on Form N–1A pursuant to section 8(b) of the Act.

3. On May 8, 1995, applicant's board of directors adopted a plan of complete liquidation (the ''Plan'') for the purpose of effecting the complete liquidation of applicant. The board of directors directed that (a) applicant redeem, pursuant to applicant's charter, on May 22, 1995 (the ''Redemption Date''), all of the shares of applicant's common stock issued and outstanding on the Redemption Date at a per share price equal to the net asset value per share of the common stock determined at the close of business on the Redemption Date; and (b) the redemption payment to be made on the Redemption Date be deemed to include an uncertificated, nontransferable (except by the laws of descent and distribution) right entitling the holder thereof to the holder's *pro rata* interest in any assets of applicant remaining available for distribution from time to time after the Redemption Date pursuant to the Plan and after satisfaction of applicant's liabilities. Provision was made for payment of all of applicant's liabilities for which the board of directors determined that such provision was necessary, including expenses expected to be incurred in connection with the winding up of applicant's affairs, by reserving an aggregate amount of $1,752,080, which was in addition to amounts reserved or accrued prior thereto.

4. The decision of applicant's board of directors that liquidation was in the best interests of applicant's shareholders was based on the following factors, among others: (a) the decline in applicant's total assets as a result of shareholder redemptions; (b) the resulting increase in applicant's expense ratio; (c) the expectation of the board of directors that significant shareholder redemptions would continue; (d) the inability to identify an investment company willing to acquire applicant's assets; and (e) the belief that, because of continuing shareholder redemptions, a delay in liquidation of applicant would result in the costs of liquidation being borne by fewer shareholders, to the detriment of those shareholders not redeeming.

5. No action by applicant's securityholders was required in connection with adoption of the Plan or authorization of the redemption of applicant's issued and outstanding common stock. Applicant's shareholders approved applicant's charter on May 12, 1993, including the provision authorizing applicant, by action of its board of directors, to redeem all of applicant's outstanding capital stock.

6. On the Redemption Date, applicant had outstanding 267,828 shares of common stock and total assets of $38,327,203. Assets in the aggregate amount of $2,459,589 were reserved for the payment of applicant's liabilities and expenses incurred in connection with the winding up of applicant's affairs. On the Redemption Date, applicant's total net assets were $35,867,614 and the net asset value per share of applicant's common stock was $133.92. Checks in payment of the proceeds of redemption were mailed on May 23, 1995 to all shareholders of record on the Redemption Date, with each check representing the recipient shareholder's *pro rata* share of the applicant's total net assets on the Redemption Date.[1]

7. Applicant has outstanding contingent obligations to certain third party obligees in respect of obligations assumed by CMC Heartland Partners and Heartland Partners, L.P. and by Milwaukee Land Company, but from which applicant has not sought or obtained releases. In addition, applicant has incurred, and continues to incur, expenses in connection with the winding up of its affairs, including: custody and transfer agency expenses; compensation of its officers and employees; compensation and expenses of members of its board of directors; real estate transfer expenses; postage, telephone, occupancy and related items; and legal and auditing fees and expenses. Such expenses have been paid, and will continue to be paid, from the amounts reserved therefor.

8. At the close of business on June 14, 1996, applicant had total assets of $603,000, all of which was reserved for liabilities and expenses in connection with the winding up of applicant's affairs. Applicant's assets currently are held in U.S. treasury bills and cash.

9. Applicant is a defendant in a lawsuit pending in federal district court in Tacoma, Washington. The plaintiff in that action, Union Pacific Railroad Company (''Union Pacific''), is seeking to collect costs of an environmental clean up of a rail yard in Tacoma. CMC Heartland Partners has assumed applicant's obligations in the defense of this matter and has filed a lawsuit in federal court in Illinois asserting that Union Pacific's claim is barred by the bankruptcy of applicant's former subsidiary to which applicant is successor by merger. Except for this

[1] It is not know yet whether any assets of applicant will be available for distribution to those persons entitled thereto after satisfaction of applicant's liabilities and completion of the winding up of applicant's affairs.

matter, applicant is not a party to any litigation or administrative proceeding.

10. Applicant has no securityholders and no securities outstanding. Applicant is not now engaged and does not propose to engage in any business activities other than those necessary for the winding up of its affairs.

11. Applicant has not filed a certification of dissolution or similar document pursuant to Maryland law. Applicant's charter was forfeited pursuant to Section 3–503 of the Maryland General Corporation Law on October 30, 1995.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21328 Filed 8–20–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. IC–22145; 812–10138]

GE Investment Management Incorporated, et al.; Notice of Application

August 15, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (''Act'').

APPLICANTS: GE Investment Management Incorporated (''GEIM''); GE Investment Services Inc. (''GEIS'') and GE Funds, on behalf of themselves and each open-end management investment company, or series thereof, that is or will be part of a group of investment companies that holds itself out to investors as related companies for purposes of investment and investor services (a) for which GEIM or any entity controlled by or under common control with GEIM now or in the future acts as investment adviser, or (b) for which GEIS or any entity controlling, controlled by or under common control with GEIS now or in the future acts as distributor (collectively, with the GE Funds, the ''GE Family Funds'' or the ''Funds'').[1]

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 12(d)(1) of the Act, and under section 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit applicants to create a ''fund of funds,'' whereby the series of GE LifeStyle Funds (''LifeStyle'') would allocate substantially all of their assets among the series of the GE Funds.

FILING DATES: The application was filed on May 8, 1996, and amended on August 9, 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 September 9, 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 such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 3003 Summer Street, Stamford, Connecticut 06905.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942–0583, or Alison E. Baur, 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 from the SEC's Public Reference Branch.

Applicants' Representations

1. GE Funds, a Massachusetts business trust, is registered under the Act as an open-end management investment company. GE Funds consists of eleven series, eight of which are offered currently.

2. GEIM, a Delaware corporation that is registered as an investment adviser under the Investment Advisers Act of 1940, acts as investment adviser and administrator to the existing series of GE Funds. GEIM is a wholly-owned subsidiary of General Electric Company, a publicly-held holding company. GEIS is the distributor of the GE Family Funds.

3. LifeStyle is organized as a Massachusetts business trust. LifeStyle will be registered under the Act as a non-diversified, open-end management investment company, and will operate as a ''fund of funds.'' GEIM will serve as investment adviser to LifeStyle. Initially, LifeStyle will consist of six series (the ''Investing Funds''): GE Conservative Strategy Fund, GE Moderate Strategy Fund, and GE Aggressive Strategy Fund (collectively, the ''Strategy Funds''), and GE Conservative Allocation Fund, GE Moderate Allocation Fund, and GE Aggressive Allocation Fund (collectively, the ''Allocation Funds''). The Strategy Funds will not charge any rule 12b–1 fees, but will impose either a front-end sales charge of up to 4.75% or, for purchases in excess of $1 million not subject to the front-end sales charge, a contingent deferred sales charge of up to 1% on shares held for less than one year. The Allocation Funds initially will be sold without a front-end or deferred sales charge, and will not charge any rule 12b–1 fees.

4. Substantially all of the assets of the Investing Funds will be invested in shares of any GE Family Fund that is not itself an Investing Fund (a ''Portfolio Fund''). The Portfolio Funds initially will consist of the following series of GE Funds: GE U.S. Equity Fund, GE International Equity Fund, GE Fixed Income Fund, GE Short-Term Government Fund, and, potentially, GE Money Market Fund. Other GE Family Funds may be added as Portfolio Funds in the future. The Strategy Funds will invest in Class A shares of the Portfolio Funds, which generally are offered with a front-end sales charge and are subject to service and distribution fees at a combined annual rate of .50% of the average net asset value attributable to the class. The Allocation Funds will invest in Class D shares of the Portfolio Funds, which are offered without a sales charge or rule 12b–1 fees. Neither the Strategy Funds nor the Allocation Funds will pay initial sales charges in connection with the Investing Funds' investments and holdings in Portfolio Fund shares.

5. Subject to the supervision and direction of LifeStyle's board of trustees, allocations of the assets of each Investing Fund among shares of the Portfolio Funds will be made in accordance with the investment objective of the Fund. Subsequent allocations of these assets will be made, consistent with quantitative and other market and economic analyses developed by GEIM in its role as investment adviser to LifeStyle. It is contemplated that GEIM will engage an investment advisory firm to consult periodically with the board of trustees concerning changes to: (a) the Portfolio Funds in which the Investing Funds may invest; (b) the percentage range of assets that may be invested by each Investing Fund in any one Portfolio Fund; and (c) the percentage range of

[1] GE Funds is the only existing GE Family Fund that currently intends to rely on the requested order. Other existing GE Family Funds do not presently intend to rely on the requested order, but may do so in the future in accordance with the terms thereof.

assets that may be invested by each Investing Fund in equity funds and fixed-income funds. Any such agreement will be subject to section 15(a) of the Act and condition 4 below.

6. In general, the only direct expenses (other than portfolio brokerage expenses associated with short-term investment of cash, if any) payable by the Investing Funds will be the advisory and administration fee to be charged by GEIM, which may be waived initially, and certain operating expenses. Although GEIM would also earn advisory and administration fees arising by virtue of its investment advisory and administration contracts with the Portfolio Funds, these fees would not be duplicative of any fee charged directly to the Investing Funds. Although shareholders of each Investing Fund would indirectly pay their proportional share of the advisory and administration fees charged to the relevant Portfolio Fund(s), any advisory fee charged at the level of the Investing Funds would compensate GEIM for services unique to the Investing Funds and not provided at the level of the Portfolio Funds.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 6(c) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under section 6(c) exempting them from section 12(d)(1)(A) and (B) to permit each Investing Fund to invest in shares of any Portfolio Fund in excess of the percentage limitations of section 12(d)(1).

3. Section 12(d) was intended to prevent unregulated pyramiding of investment companies and the negative effects that were perceived to arise from such pyramiding. Applicants assert that, in contrast to the funds of funds of a previous era, the Investing Funds present no threat to the integrity of any other mutual fund and no irreconcilable conflicts of interest. They are, rather, a straightforward, sensible, cost-effective response to investor demand for simplification and diversification. Applicants believe that the fund of funds structure will enhance the advantages of diversification because fund managers will be able to draw on a wider range of specialized expertise in different market areas. Each Investing Fund will allow investors to rely on GEIM to determine the portion of the assets of each Investing Fund to be invested in each of several Portfolio Funds and the timing of such investments. In addition, each Investing Fund will generate benefits for the Portfolio Funds in which it invests by providing additional assets with which to generate economies of scale.

4. Applicants assert that the advisory fees charged to the Investing Funds and the Portfolio Funds would not be duplicative. If GEIM determines to increase any advisory fee borne by an Investing Fund, such fees will conform to the requirements of the conditions to the requested order, including the requirement for approval by the trustees who are not ''interested persons'' of the Investing Fund as that term is defined in section 2(a)(19) of the Act (the ''Independent Trustees''). This requirement is designed to ensure that any advisory fee borne by an Investing Fund would be for services that augment, rather than duplicate, those advisory services provided to the Portfolio Funds. In addition, any investment consulting fee paid to an investment advisory firm engaged by GEIM will be paid by GEIM out of its advisory and administrative fee and, consequently, will have no effect on shareholders of the Investing Funds.

5. Applicants also assert that their proposal does not present any danger of excessive sales loads. The fact that there may be a payment of sales charges or service fees at both the Investing Fund and Portfolio Fund level will not permit any excessive or duplicative sales-related charges. If the sales charge structure described in the application is varied in the future, it will be done only in conformity with the NASD's restrictions on aggregate sales charges and service fees. Further, the Investing Funds would pay no sales charges with respect to their investments in the Portfolio Funds, unless such charges had been reviewed and approved by the Investing Fund's Independent Trustees.

6. Applicants believe that the Investing Funds would pose no threat of excessive control over the Portfolio Funds. Applicants state that redemption threats and the concomitant risk of lost advisory fees would not apply in the context of a fund of funds, all of which belong to the same family of investment companies. The Investing Funds will be internal funds that will acquire only shares of other GE Family Funds.[2] Because GEIM affiliates are the advisers to the GE Family funds and GEIM will be the adviser to the Investing Funds, a redemption from one GE Family Fund will simply lead to the placing of the proceeds into another GE Family Fund. As no Portfolio Fund will be permitted to invest in securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act except as permitted under the Sweep Application order, there cannot be a ''fund of funds of funds'' structure under the terms of the application. For these reasons, applicants submit that the requested order exempting applicants from section 12(d)(1) to the extent described in the application meets the standards of section 6(c).

B. Section 17(a)

1. Section 17(a) of the Act makes it unlawful for an affiliated person of a registered investment company, or an affiliated person of such person, to sell securities to, or purchase securities from, the company. Because the Investing Funds and the Portfolio Funds are each advised by GEIM, the Investing Funds and the Portfolio Funds may be considered ''affiliated persons'' of each other, as defined in section 2(a)(3). Thus, purchases by the Investing Funds of the shares of the Portfolio Funds and the sale by the Portfolio Funds of their shares to the Investing Funds could be deemed to be principal transactions between affiliated persons under section 17(a).

2. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and

[2] Applicants, with other parties, have filed a separate application seeking relief from the provisions of section 12(d)(1) of the Act (The G.E. Funds, File No. 812–9838) (the ''Sweep Application''). If the relief requested in the Sweep Application is granted, the applicant funds would be able to invest excess cash in excess of the limits in section 12(d)(1) in an affiliated fund that would be excluded from the definition of an investment company under section 3(c)(1) of the Act.

fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act. Applicants request an exemption under sections 6(c) and 17(b) to permit the sale of shares of the Portfolio Funds to the Investing Funds.[3] Applicants believe that the proposed transactions meet the standards of sections 6(c) and 17(b).

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The Investing Funds and the Portfolio Funds will be part of the same ''group of investment companies,'' as defined in paragraph (a)(5) of rule 11a–3 under the Act.

2. No Portfolio Fund in which an Investing Fund invests shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except as permitted under the Sweep Application order.

3. At least a majority of the trustees of LifeStyle will be Independent Trustees, and the selection of the Independent Trustees necessary to fill any vacancies on the board of trustees, as well as the nomination of those persons to be recommended by the board of trustees in connection with any shareholder vote, will be committed to the discretion of such Independent Trustees.

4. Prior to approving any advisory contract of an Investing Fund under section 15 of the Act, the trustees of LifeStyle, including a majority of the Independent Trustees, shall find that any advisory fees charged under such contract are based on services that will be in addition to, rather than duplicative of, the services provided under the advisory contract of any Portfolio Fund in which the Investing Fund may invest. These findings and their basis will be recorded fully in the minute book of LifeStyle.

5. Any sales charges or service fees, as such terms are defined under rule 2830(b) of the NASD Rules of Conduct,[4] as may be charged with respect to securities of an Investing Fund, when aggregated with any such sales charges or service fees borne by the Investing Fund with respect to the shares of a Portfolio Fund, shall not exceed the limits set forth in rule 2830(d) of the NASD Rules of Conduct.

6. Applicants will provide the following information in electronic format to the Chief Financial Analyst of the SEC's Division of Investment Management as soon as reasonably practicable following each fiscal year-end of each Investing Fund, unless the Chief Financial Analyst notifies applicants that the information need no longer be submitted: (a) monthly average total assets for each Investing Fund and each Portfolio Fund in which an Investing Fund invests; (b) monthly purchases and redemptions (other than by exchange) for each Investing Fund and each Portfolio Fund in which an Investing Fund invests; (c) monthly exchanges into and out of each Investing Fund and each Portfolio Fund in which an Investing Fund invests; (d) month-end allocations of each Investing Fund's assets among the Portfolio Funds in which it invests; (e) annual expense ratios for each Investing Fund and each Portfolio Fund in which an Investing Fund invests; and (f) a description of any vote taken by the shareholders of any Portfolio Fund in which an Investing Fund invests, including a statement of the percentage of votes cast for and against the proposal by the Investing Fund and by the other shareholders of that Portfolio Fund.

7. Substantially all of the assets of each Investing Fund will be invested in shares of Portfolio Funds. Each Investing Fund will not hold any investment securities other than shares of Portfolio Funds and money market instruments.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21321 Filed 8–20–96; 8:45 am]

BILLING CODE 8010–01–M

[3] Section 17(b) applies to specific proposed transactions, rather than an ongoing series of future transactions. *See* Keystone Custodian Funds, 21 S.E.C. 295, 298–99 (1945). Section 6(c) frequently is used to grant relief from section 17(a) to permit an ongoing series of future transactions.

[4] The staff notes that, until recently, rule 2830 of the NASD Rules of Conduct was section 26 of Article III of the NASD Rules of Fair Practice.

[Investment Company Act Release No. IC–22144; 811–8048]

Special Opportunities Trust, Health Care Securities, Series I; Notice of Application

August 15, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Special Opportunities Trust, Health Care Securities, Series I.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 20, 1996, and amended on July 23, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 9, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 251 North Illinois Street, Suite 500, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenless, Senior Counsel, (202) 942–0581, 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 from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a unit investment trust created under the laws of New York and registered under the Act. On September 23, 1993, applicant filed a notification of registration on Form N–8A under section 8(a) of the Act and a registration statement on Form N–8B–2 under section 8(b) of the Act. On the same day, applicant filed a registration statement on Form S–6 under the Securities Act of 1933 to register an indefinite number of units of fractional undivided interests (''Units''). The registration statement became effective and the initial public offering took place on November 17, 1993.

2. In compliance with the terms of its indenture, applicant terminated its operations on December 31, 1995. On January 17, 1996, applicant made a final liquidating distribution of $2,778,121.81, or $15.1201 per Unit, to unitholders of record as of December 31,

1995. Each unitholder received, in cash, the net asset value of his or her interests in applicant.

3. Expenses incurred in connection with the liquidation consisted of $480 in trustee's fees and expenses, $3,897.66 in brokerage commissions and $876 in annual tax filing fees. These expenses were incurred by applicant and reflected as a reduction of the liquidating distribution. All other expenses, consisting principally of legal fees and expenses in connection with the deregistration, will be borne by applicant's depositor. At the time of applicant's liquidation, applicant had no unamortized organizational expenses.

4. As of the date of the application, applicant had no assets, liabilities, or unitholders, and was not a party to any litigation or administrative proceeding. Applicant is not engaged, nor proposes to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21323 Filed 8–20–96; 8:45 am]

BILLING CODE 8010–01–M

Global Timber Corporation; Order of Suspension of Trading

[File No. 500–1]

August 19, 1996.

It appears to the Securities and Exchange Commission (''Commission'') that there is a lack of current and accurate information concerning the securities of Global Timber Corporation (''Global'') because of questions regarding the accuracy of representations and assertions by Global, and by others, in press releases and documents sent to and statements made to market-makers of the stock of Global, other broker-dealers, and to investors concerning, among other things: (1) Global's actual financial condition; and (2) its Form 10 filing, which was withdrawn on May 24, 1996.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, August 19, 1996 through 11:59 p.m. EDT, on August 30, 1996.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–21454 Filed 8–19–96; 1:50 pm]

BILLING CODE 8010–01–M

[Release No. 34–37569; International Series Release No. 1014; File No. SR–ODD–96–1]

Self-Regulatory Organizations; Canadian Derivatives Clearing Corporation; Order Approving Proposed Amendments to Options Disclosure Document

August 14, 1996.

On August 9, 1996, the Canadian Derivatives Clearing Corporation (''CDCC'')[1] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 (''Act''),[2] five copies of an amended options disclosure document (''ODD''), which describes the risks and characteristics of Canadian exchange-traded put and call options available to American investors.

Previously, on October 2, 1994, the Commission approved the use and distribution of a TCO ODD which discussed the risks and uses of options on equity securities.[3] Subsequently, on August 21, 1985, the Commission approved an amended TCO ODD that incorporated discussion of the risks and uses of Canadian exchange-traded options on stock indexes and bonds.[4] Later, on May 19, 1987, the Commission approved an amended TCO ODD that, among other things, expanded the document to include a discussion of the characteristics and risks of options on the Government of Canada Treasury Bill Price Index.[5] On April 1, 1991, the Commission approved an amended TCO ODD that, among other things, added reference to an option based on the Toronto Stock Exchange 35 Composite Index, added new terms to its glossary, and deleted reference to several options which are no longer listed on a Canadian exchange.[6] CDCC has now further amended the ODD to, among other things, reflect the name change of the corporation from Trans Canada Options Inc. to Canadian Derivatives Clearing Corporation, add new terms to its glossary, and make other minor additions and deletions to reflect changes in the Canadian options market since the disclosure document was last amended in 1991.

Rule 9b–1 provides that an options market must file five preliminary copies of an amended ODD with the Commission at least 30 days prior to the date definitive copies of the ODD are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of information disclosed and the protection of investors. The Commission has reviewed the CDCC ODD, and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of the disclosure document as of the date of this order.[7]

It is therefore ordered, pursuant to Rule 9b–1 under the Act,[8] that the proposed amendment to the CDCC ODD is approved, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21319 Filed 8–20–96; 8:45 am]

BILLING CODE 8010–01–M

[1] The Canadian Derivatives Clearing Corporation was formerly known as Trans Canada Options Inc. (''TCO''). The name of the corporation was changed in January 1996.

[2] 17 CFR 240.9b–1.

[3] *See* Securities Exchange Act Release No. 21365 (October 2, 1984), 49 FR 39400 (October 5, 1984).

[4] *See* Securities Exchange Act Release No. 22349 (August 21, 1985), 50 FR 34956 (August 28, 1985).

[5] *See* Securities Exchange Act Release No. 24480 (May 19, 1987), 52 FR 20179 (May 29, 1987).

[6] *See* Securities Exchange Act Release No. 29033 (April 1, 1991), 56 FR 14407 (April 9, 1991).

[7] Rule 9b–1 provides that the use of an ODD shall not be permitted unless the options class to which the document relates is the subject of an effective registration statement on Form S–20 under the Securities Act of 1933. On August 14, 1996, the Commission, pursuant to delegated authority, declared effective, Post-Effective Amendment No. 17 to CDCC's Form S–20 registration statement. *See* File No. 2–69458.

[8] 17 CFR 240.9b–1.

[9] 17 CFR 200.30–3(a)(39).

[Release No. 34–37577; File No. SR–CBOE–96–55]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to its System for Suspending the Retail Automatic Execution System for Equity Options in the Event of News Announcements Near the Close of Trading

August 15, 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 August 14, 1996, the Chicago Board Options Exchange, Incorporated (''CBOE'') 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 to the portion of the proposal to extend the pilot program pending the Commission's review of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE seeks permanent approval of a program for suspending the Exchange's automatic execution system in the event of news announcements near the close of trading, as described in Interpretation and Policy .01 under CBOE Rule 6.6. The Exchange also proposes to continue the pilot program pending consideration of the request for permanent approval.

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make permanent the Exchange's system that suspends its automatic execution system in the event of news announcements near the close of trading, as described in Interpretation and Policy .01 under CBOE Rule 6.6.[1] The Exchange is also proposing continuation of the pilot operation of the system while the proposal for permanent status is being considered by the Commission.

The automatic RAES suspension system is 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.[2] The system monitors news wires during this period, and automatically suspends the Exchange's Retail Automatic Execution System in options on stocks that are the subject of such announcements in order to prevent automatic executions at prices that do not reflect the news. This program has been in place on a pilot basis since July 1, 1996, to enable the Exchange to evaluate it before deciding whether to adopt it on a permanent basis.

Based on its experience with the pilot operation of the system, the Exchange has now determined to propose its adoption on a permanent basis. During the first four weeks of the pilot operation of the system, the Exchange believes that it performed as intended to suspend RAES in particular classes of options each time there was a news announcement pertaining to an underlying stock during the period of time when options continued to trade after the close of trading in underlying stocks. The Exchange submitted a report of the operation of the pilot from July 1, 1996 through July 26, 1996 to the Commission. The report shows that during this period, RAES was suspended a total of 90 times and was reinstated after suspension 36 times. Although the news announcements covered a range of subjects, at least 15 were earnings reports, evidencing that many issuers continue to release such news after the close of stock trading while options continue to be traded. Of the 90 suspensions, 26 were in classes in which there were RAES-eligible orders after the suspension. Of the 132 RAES-eligible orders in these classes, 69 were executed after RAES was reactivated (63 of which related to a single suspension and subsequent reactivation of RAES in connection with the release of earnings for IBM), and 63 were rerouted as follows: to PAR terminals (30 orders), to printers at the post (4 orders), to members' booths (22 orders), or to the limit order book (7 orders). Forty-five of these rerouted orders (71%) were filled in the auction market. Eighteen orders during the pilot period expired unfilled. Because these orders were all submitted at or after the close of stock trading and related to options on stocks that were the subject of post-close news announcements, the Exchange believes that it is reasonable to conclude they were entered for the purpose of taking advantage of prices that had not been adjusted to reflect news announcements. Accordingly, the Exchange believes that the system appears to have worked as intended to prevent the execution of these orders at inappropriate prices, while permitting most orders to be executed at prices established in the auction market. The Exchange notes that reactivation of RAES was generally not a significant factor in the execution of these orders (with the one exception of the IBM orders noted above), because most had already been executed in the auction market by the time RAES was reactivated.

The Exchange believes that the pilot operation of the RAES suspension system demonstrated that it is able to prevent the automatic execution of option orders at inappropriate prices while avoiding any negative impact on the operation of the Exchange. For this reason, the Exchange believes the system should be approved on a permanent basis, and that to do so is consistent with the objectives of Section 6(b)(5) of the Act, in that it will help to assure that option orders are executed at fair prices in the event of significant news announcements, which serves to promote just and equitable principles of trade and to protect 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.

[1] The 30-day pilot was proposed in File No. SR–CBOE–96–37. *See* Securities Exchange Act Release No. 37380 (June 28, 1996). The pilot was extended for an additional 15 days in File No. SR–CBOE–96–53. *See* Securities Exchange Act Release No. 37505 (July 31, 1996).

[2] CBOE may soon propose reducing to five minutes the time when options continue to trade after the close of stock trading. So long as options trade for any period of time after the close of stock trading, CBOE believes it would need to maintain the system for suspending RAES in the event of news announcements during this period. Only if options trading and stock trading close concurrently would there be no need for such a system. CBOE does not support concurrent closings because this would not allow time for closing options prices to be determined based on closing stock prices, or for participants to open or close options positions for hedging purposes based on closing stock prices. For a more detailed discussion of the reasons for continuing to trade options after the close of trading in the primary markets for underlying stocks and the problems this presents for RAES, *see* the discussion in SR–CBOE–96–37, which proposed the initial 30-day pilot in the system that is the subject of this filing, notice of which was given in Securities Exchange Act Release No. 37380 (June 28, 1996).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested that the Commission approve on an accelerated basis pursuant to Section 19(b)(2) of the Act the portion of the proposed rule change that proposes continuation of the pilot operation of the RAES suspension system pending consideration by the Commission to approve the system on a permanent basis. In that regard the Commission finds it 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, to permit CBOE to continue the pilot operation of the system while the Commission considers CBOE's proposal to implement the system on a permanent basis. The Commission notes that the Exchange has not reported any significant problems with the operation of the system to date.

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 this portion of the proposal is appropriate because it is to be implemented for a limited period pending the review by the Commission of the Exchange's proposal to seek permanent approval of the pilot program. During this period all orders will be handled in accordance with the terms of the pilot, as previously approved by the Commission.

Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve an extension of the pilot program, on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the file number in the caption above and should be submitted by September 11, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[3] that the portion of the proposed rule change requesting the continuation of the pilot is approved on an accelerated basis, pending Commission review of the proposal requesting permanent approval.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21320 Filed 8–20–96; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78s(b)(2).

[4] 17 CFR 200.30–3(a)(12).

[Release No. 34–37562; File No. SR–DTC–96–09]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Establishing Procedures to Establish a Drop Window Service

August 13, 1996.

On April 25, 1996, the Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–96–09) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] to establish procedures for a transfer agent drop service (''Drop Service'') that will provide transfer agents located outside of New York City with a central location within the Borough of Manhattan to receive and deliver securities. Notice of the proposal was published in the Federal Register on June 18, 1996.[2] No comments letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

DTC proposes to offer a Drop Service in order to provide transfer agents located outside of New York City with a central location within Manhattan for the receipt of securities from banks, broker-dealers, depositories, and shareholders. DTC's Drop Service will enable transfer agents to comply with New York Stock Exchange (''NYSE'') Rule 496 and American Stock Exchange (''Amex'') Rule 891. Each of these rules require a transfer agent seeking qualification as a transfer agent for securities listed on the respective exchanges to maintain an office acceptable to the exchange and the issuer located south of Chambers Street in the Borough of Manhattan, City of New York to receive and deliver securities.

In the past, some transfer agents located outside of New York City complied with these rules by using a drop service offered by the New York office of the Midwest Clearing Corporation (''MCC''). However, in 1996 MCC withdrew from the clearing business and no longer offers a drop service.[3] DTC will offer the DTC Drop Service to replace the drop facility offered by MCC and to ensure continuity of service to transfer agents. In connection with the Drop Service, DTC will provide ancillary services to transfer agents such as the inspection of securities, maintenance of records regarding the receipt and delivery of securities, facilitation of rush transfers, cancellation of certificates, and advice regarding legal and regular transfer requirements.[4] In order to use DTC's Drop Service, all transfer agents will be required to execute the Drop Service

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 37303 (June 11, 1996), 61 FR 30931.

[3] For a complete discussion of MCC's and Midwest Securities Trust Company's (''MSTC'') withdrawal from the clearing and depository business, refer to Securities Exchange Act Release No. 36684 (January 5, 1996), 61 FR 1195 [File Nos. SR–CHX–95–27, SR–DTC–95–22, SR–MCC–95–04, SR–MSTC–95–10, SR–NSCC–95–15] (order approving MCC's and MSTC's withdrawal from the clearance and settlement, securities depository, and branch receive businesses).

[4] A more detailed description of these services is set forth in Section II of DTC's Drop Service Agreement which sets forth the terms under which DTC's service will be provided. The Drop Service Agreement is attached as Exhibit 2 to DTC's proposed rule change and is available through DTC or through the Commission's Public Reference Room.

Agreement setting forth DTC's and the transfer agents' responsibilities.

II. Discussion

Section 17A(b)(3)(F) of the Act [5] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody of the clearing agency or for which it is responsible and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes that DTC's proposal is consistent with Section 17A(b)(3)(F) of the Act because DTC has taken steps to safeguard the securities which are in its custody or control or for which it is responsible by requiring each transfer agent to execute an agreement that sets forth DTC's and the Transfer agents' respective responsibilities. Moreover, the Drop Service will foster cooperation and coordination between DTC and other entities engaged in the clearance and settlement of securities transactions by providing a facility that will enable transfer agents to comply with certain NYSE and Amex rules.

III. Conclusion

On the basis of the foregoing, the Commission finds that DTC's proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–96–09) be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21329 Filed 8–20–96; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[6] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37564; File No. SR–NYSE–96–22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change Relating to the Extension of Rule 103A (Specialist Stock Reallocation)

August 14, 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 August 6, 1996, the New York Stock Exchange, Inc. (''NYSE'' 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 NYSE proposes to extend the effectiveness of Rule 103A, Specialist Stock Reallocation, until September 10, 1997.

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 NYSE 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 NYSE 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 intent of Rule 103A is to encourage a high level of market quality and performance in Exchange listed securities. Rule 103A grants authority to the Exchange's Market Performance Committee to develop and administer systems and procedures, including the determination of appropriate standards and measurements of performance, designed to measure specialist performance and market quality on a periodic basis to determine whether or not particular specialist units need to take actions to improve their performance. Based on such determinations, the Market Performance Committee is authorized to conduct a formal Performance Improvement Action in appropriate cases.

On May 10, 1995 the SEC extended the effectiveness of the rule until September 10, 1996.[3] In its approval order, the Commission stated its continued belief that the Exchange should develop objective performance standards to measure specialist performance.[4] In this regard, the Exchange notes that it has previously developed two objective measures of specialist performance. It should be noted, however, that these measures are not currently included in the Rule 103A program. The first objective measure of performance pertains to specialist capital utilization. Adopted in December 1993 on a pilot basis, the capital utilization measure of specialist performance focuses on a specialist unit's use of its own capital in relation to the total dollar value of trading activity in the unit's stocks.[5] The capital utilization measure pilot has been extended until September 10, 1996.[6] The Exchange's Allocation Committee is being provided with specialist capital utilization information for its use in allocation decisions.

The second objective measure of performance, which was recently developed, pertains to ''near neighbors.'' On June 30, 1995, the Commission approved this filing on a fifteen month pilot basis through September 10, 1996.[7] The ''near neighbors'' measure compares certain performance measures of a given stock (price continuity, depth, quotation spread and capital utilization) to those of its ''near neighbors'' (*i.e.*, stocks that have certain similar characteristics). The Exchange would provide ''near neighbors'' information to the Allocation Committee for its use in allocating newly-listed stocks.[8] On July 1, 1996, the Exchange filed to extend the pilot programs for both the near neighbor and capital utilization measure of specialist performance.[9] During the next twelve months, the Exchange expects to work with outside consultants and appropriate constituent groups to develop performance standards applicable to these objective

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35704 (May 10, 1995), 60 FR 26060 (May 16, 1995) [File No. SR–NYSE–95–18].

[4] *See id.* The Commission notes that the Exchange's current evaluation criteria under Rule 103A.10 include objective standards that measure specialist performance at the opening (both regular and delayed), systematized order turnaround, and the timeliness of a unit's response to status requests. Specialist performance also is measured by the Exchange's Specialist Performance Evaluation Questionnaire.

[5] *See* Securities Exchange Act Release No. 33369 (December 23, 1993), 58 FR 69431 (December 30, 1993) [File No. SR–NYSE–93–30].

[6] *See* Securities Exchange Act Release No. 35926 (June 30, 1995), 60 FR 35760 (July 11, 1995) [File No. SR–NYSE–95–24].

[7] *See* Securities Exchange Act Release No. 35927 (June 30, 1995), 60 FR 35764 (July 11, 1995) [File No. SR–NYSE–95–05].

[8] The near neighbor measure would provide the Allocation Committee with performance data.

[9] File No. SR–NYSE–96–17.

measures for incorporation into Rule 103A.

Regarding the Intermarket Trading System (''ITS''), the Commission has stated its belief that the mature status of the ITS as a market structure facility warrants the incorporation of ITS turnaround and ''trade-through'' concerns into the NYSE's Rule 103A performance standards. The Exchange continues to believe that ITS matters are more appropriately addressed by means of the Exchange's regulatory process rather than through its performance measurement system, but will continue to study the matter.

2. Statutory Basis

The Exchange believes the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes the proposed extension of Rule 103A is consistent with these objectives in that it will allow the Exchange to continue to administer the rule on an uninterrupted basis, fostering quality specialist performance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 6 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W.,Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–96–22 and should be submitted by September 11, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21318 Filed 8–20–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37563; File No. SR–PSE–96–21]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Liability of the Exchange and Its Governors, Officers, and Agents

August 14, 1996.

I. Introduction

On June 17, 1996, the Pacific Stock Exchange, Inc. (''PSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new provisions pertaining to the liability of the Exchange and to amend an existing provision. Specifically, the PSE proposes to adopt: New Rule 13.2, which clarifies and broadens the existing limitations on the Exchange's liability; new Rule 13.3, which prohibits members from instituting certain types of legal proceedings against Exchange officials; and new Rule 13.4, which provides for the recovery of the Exchange's defense costs in certain circumstances. In addition, the PSE proposes to amend Rule 6.59, to clarify its purposes and to provide a reference to the new provisions in Rule 13.

Notice of the proposed rule change appeared in the Federal Register on July 3, 1996.[3] No comments were received on the proposed rule change.[4] This order approves the PSE's proposal.

II. Background and Description

A. Liability of Exchange

The principal rule concerning Exchange liability is contained in Article VI, Section 6 of the PSE Constitution. Article VI, Section 6 provides that the Exchange is not liable to members for damages arising out of the use or enjoyment of Exchange facilities in the conduct of their business.

New Rule 13.2(a)[5] clarifies that, except as otherwise expressly provided in the rules of the Exchange, neither the Exchange nor its Governors, officers, committee members, employees, or agents shall be liable to members or their associated persons except where the Exchange's liability is attributable to willful misconduct, gross negligence, bad faith, fraud, or criminal acts. In addition, new Rule 13.2(a) clarifies that the limitation of the Exchange's liability includes interruption, failure or unavailability of Exchange facilities or services.

New Rule 13.2(a)[6] also adds language which limits the Exchange's liability for errors, omissions, or delays in calculating or disseminating various kinds of data relating to current or closing index values, reports of transactions or quotations for options or other securities, and further provides that the Exchange does not warrant the

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[10] 17 CFR 200.30–3(a)912) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 37391 (July 1, 1996), 61 FR 36100 (July 9, 1996).

[4] The PSE submitted a letter regarding the enforceability of the proposed rules under state law. See letter from Rosemary A. MacGuiness, Senior Counsel, Director of Arbitration, PSE, to Glenn Barrentine, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission, dated August 7, 1996.

[5] The PSE notes that new Rule 13.2(a) is based on Chicago Stock Exchange (''CHX'') Article I, Rule 18(a) and the proposed rule changes filed by the Chicago Board Options Exchange (''CBOE'') to Rule 6.7(a). See Securities Exchange Act Release No. 36863 (February 20, 1996), 61 FR 7285 (February 27, 1996) (File No. SR–CBOE–96–02).

[6] The PSE notes that this language to new Rule 13.2(a) is based on CBOE Rule 24.12.

results obtained by any person or entity relying on data transmitted by or on behalf of the Exchange or any designated reporting authority. New Rule 13.2(a)[7] states that its provisions are in addition to, and do not limit, the provisions of the PSE Constitution, Article VI, Section 6. Lastly, paragraphs (b) and (c) of new Rule 13.2[8] describe the monetary limits on the Exchange's liability with respect to the Exchange's order routing systems, electronic book, and automatic execution systems.[9]

B. Legal Proceedings Against Exchange Governors, Officers, Employees, or Agents

New Rule 13.3 [10] prohibits a member or associated person from instituting a lawsuit or any other type of legal proceeding against any Governor, officer, employee, agent, or other official of the Exchange or any of its subsidiaries based on actions taken or omitted to be taken while such person is acting on Exchange business or the business of any of its subsidiaries. Rule 13.3, however, does not apply where private rights of action under the federal securities laws exist, to appeals of disciplinary actions, to other actions by the Exchange as provided for in its rules, and, with respect to the Governors of the Exchange, to the extent such action or omission is inconsistent with the Exchange's Certificate of Incorporation.

The Exchange notes that new Rule 13.3 does not prohibit a member from suing the Exchange as a result of the actions of these individuals; rather it merely prohibits suits against the person in his or her individual capacity. According to the PSE, the purpose of disallowing lawsuits or other legal proceedings against Exchange officials or agents when they are acting on Exchange business is to eliminate the potential exposure to personal liability of such persons which impairs their ability to perform their duties.

C. Exchange's Costs of Defending Legal Proceedings

New Rule 13.4 [11] requires a member or associated person who fails to prevail in a lawsuit or other legal proceeding instituted by that person against the Exchange or other specified persons, and related to the business of the Exchange, to pay to the Exchange all reasonable expenses, including attorney's fees, incurred by the Exchange in its defense of such proceeding. The requirement would apply only where the costs exceed fifty thousand dollars ($50,000).

According to the PSE, this provision is intended to discourage unfounded, vexatious litigation against the Exchange where the Exchange's costs are significant, without having an undue chilling effect on legitimate claims of members. The proposed rule would apply to lawsuits or other legal proceedings that might be instituted by members against the Exchange or to any of its Governors, officers, committee members, employees, or agents. This provision, however, would not apply to disciplinary actions, to administrative appeals of Exchange actions, or to any specific instance where the Board of Governors has granted a waiver of this rule.

D. Liability of Exchange for Actions of Order Book Officials

Current Rule 6.59 (a) and (g) are being amended for clarification purposes.[12] Rule 6.59 is also adding a reference to the new provisions in Rule 13.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[13] Specifically, the Commission believes that by limiting the liability of the Exchange and its Governors, officers, committee members, employees, and agents, by precluding certain types of legal actions by members against such persons individually, and by discouraging frivolous lawsuits against the Exchange, the costs of the Exchange in responding to claims and lawsuits will be reduced, thereby permitting the resources of the Exchange to be better utilized for promoting just and equitable principles of trade and for protecting investors and the public interest.

A. Liability of Exchange

The Commission believes the rule change limiting the liability of the Exchange and its Governors, officers, committee members, employees, and agents, to situations attributable to willful misconduct, gross negligence, bad faith, fraud, or criminal acts, will adequately preserve members' right to pursue actions in circumstances where the Exchange and its officials should be held accountable, or where there has been a violation of the federal securities laws.

B. Legal Proceedings Against Exchange Governors, Officers, Employees, or Agents

The Commission believes that the rule change prohibiting members from instituting legal proceedings against Exchange officials should be approved. Specifically, the rule change prohibits members and associated persons from instituting lawsuits or any other legal proceedings against any Governor, officer, employee, agent, or other official of the Exchange or any subsidiary of the Exchange, for actions taken or omitted to be taken by these parties in connection with official business of the Exchange or any subsidiary. New Rule 13.3, however, does not impair members' ability to initiate legal action based upon violations of the federal securities laws for which a private right of action exists, appeals of disciplinary actions, other actions by the PSE as provided for in the Exchange's rules, and with respect to the Governors of the Exchange, to the extent such action or omission is inconsistent with the Exchange's Certificate of Incorporation. The Commission believes that new Rule 13.3 is consistent with the Act because it will help to ensure that the covered persons will be able to carry out their duties under the Act, and to enforce compliance with the Act and the rules thereunder, as well as the rules of the Exchange, without the threat of personal liability.

C. Exchange's Cost of Defending Legal Proceedings

The Commission believes that the rule change requiring members or associated persons who fail to prevail in a lawsuit

[7] The PSE notes that this aspect of new Rule 13.2(a) is based on CHX Article 1, Rule 18(b).

[8] The PSE notes that new Rules 13.2 (b) and (c) are based on CBOE Rules 6.7 (b) and (c).

[9] Under new Rule 13.2(b), the PSE's liability with respect to the Exchange's order routing systems, electronic book, and automatic execution systems is limited to the larger of any recovery obtained by the Exchange under any applicable insurance or: (i) $100,000 as to any claim or series of claims made by a single member on a single day; (ii) $250,000 as to all claims by all members on any single trading day; and (iii) $500,000 as to all claims, in the aggregate, by all members in any calendar month.

Under new Rule 13.2(c), if all of the claims arising out of the use of enjoyment of the facilities afforded by the Exchange cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of liability provided for in paragraph (b), the maximum amount will be allocated based on the proportion that each claim bears to the sum of the all such claims.

[10] The PSE notes that new Rule 13.3 is based on CHX Article I, Rule 17 and the proposed rule changes filed by the CBOE to Rule 6.7A. See Securities Exchange Act Release No. 36863, *supra* note 5.

[11] The PSE notes that new Rule 13.4 is based on CHX Article I, Rule 18(c) and the proposed rule changes filed by the CBOE to Rule 2.24. See Securities Exchange Act Release No. 36863, *supra* note 5.

[12] The PSE notes that the amendments are based on CBOE Rules 7.11(b)(1) and 7.11(e), respectively.

[13] 15 U.S.C. 78f(b)(5) (1988).

or other legal proceeding instituted by that person against the Exchange or other specified persons, and related to the business of the Exchange, to pay all reasonable expenses, including attorneys' fees; incurred by the PSE in its defense during such proceedings if such expenses exceed $50,000, is consistent with Section 6(b)(4) of the Act.[14] Section 6(b)(4) requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

The Commission believes that because the funds to pay the legal expenses incurred by the Exchange in defending legal suits are generated, in part, by membership fees, the rule change reflects a reasonable business decision by the membership to shift the financial burden of litigation to the responsible member under certain circumstances. Moreover, as the Exchange's legal expenses must be reasonable and must accrue to at least $50,000 before a member would be obligated to compensate the Exchange, the Commission believes that the rule change should not provide an undue disincentive to litigation, in so far as it will permit the discovery needed to assess the merits of members' cases.

The Commission also notes that new Rule 13.4 specifically excludes disciplinary actions brought by the Exchange, administrative appeals of Exchange actions, as well as any other specific instance where the Board of Governors grants a waiver of this rule. The Commission believes that this provision will ensure that members will be able to freely pursue their right to appeal any action brought by the Exchange for violations of its rules.[15]

D. Liability of Exchange for Actions of Order Book Officials

The Commission believes that because the PSE's proposal regarding the Exchange's order book officials clarifies the application of the rules governing Exchange liability, it should be approved.

IV. Conclusion

For the foregoing reasons, the Commission finds that the PSE's proposal to limit the liability of the Exchange and its directors, officers, employees, and agents, to preclude certain types of legal actions by members against such persons individually, and to require members to pay the Exchange's costs of litigation under specified circumstances is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–PSE–96–21) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21234 Filed 8–20–96; 8:45 am]

BILLING CODE 8010–01–M

[14] 15 U.S.C. 78f(b)(4) (1988).

[15] The Commission notes that if the minimum amount in the fee provision were substantially lower it might have a more difficult time concluding that the provision was consistent with Section 6(b)(4). This is because such a lower threshold amount could be found to represent an inequitable allocation of fees to the disadvantage of certain members.

[16] 15 U.S.C. 78s(b)(2) (1988).

[17] 17 CFR 200.30–3(a)(12).

[Release No. 34–37570; File No. SR–PHILADEP–96–11]

Self-Regulatory Organizations; The Philadelphia Depository Trust Company; Notice of Filing of a Proposed Rule Change Regarding the Destruction of Certain Expired Securities Certificates

August 14, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 28, 1996, the Philadelphia Depository Trust Company (''Philadep'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–PHILADEP–96–11) as described in Items I, II, and III below, which Items have been prepared primarily by Philadep. 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

Philadep proposes to amend its rules to permit the destruction of expired securities certificates representing warrants or rights that have expired to be carried out under the supervision of Philadep's internal audit department.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend Rule 31 which governs the orderly destruction of securities certificates relating to expired warrants and rights.[3] Currently, Section (c) of Rule 31 requires that all securities to be destroyed pursuant to the rule must be forwarded to Philadep's internal audit department for destruction.[4] Under the proposed rule change, Philadep will be allowed to destroy the certificates in a designated area of Philadep under the supervision of the internal audit department instead of being required to destroy such certificates in the internal audit department itself.

Philadep believes the proposed rule change complies with Section 17A of the Act because it is contemplated to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions by providing an efficient administrative mechanism to destroy expired securities that presently and unnecessarily occupy critical space in Philadep's vault.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries submitted by Philadep.

[3] The procedures for the destruction of expired securities set forth in Rule 31 require Philadep to (i) contact the transfer agent or the issuer of the expired securities to verify that the respective warrants or rights have expired, (ii) obtain written confirmation from such transfer agent or issuer that the certificates representing such warrants or rights have expired (if there is no transfer agent, Philadep personnel must exercise all reasonable due diligence to confirm the expired nature of the respective certificates including consulting with the Philadep's legal department, internal audit department and senior management), (iii) notify its participants that in the judgment of the transfer agent, or other appropriate parties if a transfer agent does not exist, the securities certificates have expired, (iv) delete such securities positions from its participants' account on or after the thirtieth day following the date of such notice, and (v) appropriately mark the securities certificates and forward them to its internal audit department for destruction.

[4] Securities Exchange Act Release No. 35426 (February 28, 1995) [File No. SR–PHILADEP–94–05] (order approving proposed rule change authorizing Philadep to implement a program for the destruction of securities certificates relating to expired warrants and rights).

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep believes that the proposed rule change poses no appreciable threat or burden on competition and should foster competition because it provides for an administratively more effective vault protocol.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Philadep consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to the file number SR–PHILADEP–96–11 and should be submitted by September 11, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21324 Filed 8–20–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37571; File No. SR–PHILADEP–96–12]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Legal Deposit Processing

August 14, 1996.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on June 28, 1996, the Philadelphia Depository Trust Company (''Philadep'') 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 primarily by Philadep. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Philadep proposes to allow its participants to access Philadep's legal deposit processing services through the participants' Philanet terminal system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep 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. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit Philadep participants to access Philadep's legal processing services through the participants' Philanet terminal system.[3] Currently, participants access Philadep's legal deposit processing services by forwarding to Philadep a security certificate with a manually-completed legal deposit ticket attached.[4] Under the proposed rule change, participants will be able to initiate legal deposit processing by utilizing their Philanet terminals to input legal deposit information directly to Philadep. Once the information is entered by the participant, the Philanet system will print a deposit ticket at the participant's local printer for attachment to the securities to be deposited at Philadep. Participants then will forward the securities and deposit ticket to Philadep, and legal deposit processing will proceed in the regular manner according to Philadep's current rules and procedures.

The proposed rule change also includes one system enhancement to legal deposit processing. Because information regarding the securities to be deposited will be transmitted directly to Philadep through the Philanet terminals, legal deposit processing can begin before Philadep receives the physical certificates from its participants.[5] This additional processing time will permit Philadep to compare its participants' deposit information against the Security Information Center (''S.I.C.'')[6] database to determine whether a certificate has been reported lost or stolen. The proposed rule change should permit Philadep to alert its participants by phone or facsimile if a certificate has been reported lost or stolen prior to the

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[5] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by Philadep.

[3] Philanet is an electronic communication system that links Philadep to its participants. Philanet allows participants to access information affecting their accounts through a terminal located at participants' offices. For a more complete description of the Philanet system, refer to Securities Exchange Act Release No. 34250 (June 23, 1994), 59 FR 33808 [File No. SR–PHILADEP–93–02] (notice and order granting accelerated approval of the Philanet system on a permanent basis).

[4] The legal deposit ticket contains information regarding the identity of the depositing participant, the number of shares deposited, and the CUSIP and certificate numbers relating to the deposited securities.

[5] Although preliminary processing may begin prior to receipt of the certificates, Philadep will not credit any participant's account prior to the receipt of such certificates. Telephone Conversation between Joseph E. DiNunzio, Senior Vice President, Philadep, and Mark A. Steffensen, Senior Counsel, Division of Market Regulation, Commission (August 6, 1996).

[6] S.I.C. is the Commission's current designee to receive, store, and disseminate information with regard to missing, lost, counterfeit, or stolen securities pursuant to Section 17(f) of the Act and Rule 17f–1 thereunder.

completion of full legal deposit processing and before a participant credits its customer's account.

Philadep believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[7] because it fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and assures the safeguarding of securities which are in the custody and control of Philadep or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep believes the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change. However, several participants have requested that Philadep enhance Philanet as described in this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[8] of the Act and pursuant to Rule 19b–4(e)(4)[9] promulgated thereunder because the proposal effects a change in an existing service of a registered clearing agency that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to File No. SR–PHILADEP–96–12 and should be submitted by September 11, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21325 Filed 8–20–96; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. § 78q–1 (1988).

[8] 15 U.S.C. § 78s(b)(3)(A)(iii) (1988).

[9] 17 CFR 240.19b–4(e)(4) (1996).

[10] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37575; File No. SR–Phlx–96–18]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change to Trade a European-style National Over-the-Counter Index Option

August 15, 1996.

On May 28, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to change the execution style of the National Over-the-Counter Index (''Index'') option, from American-style to European-style.

The proposed rule change was published for comment in Securities Exchange Act Release No. 37355 (June 24, 1996), 61 FR 33790 (June 28, 1996). No comments were received on the proposal.

The Exchange began trading the Index in 1985. The Index is a capitalization-weighted market (broad-based) index composed of the 100 largest capitalized stocks trading over-the-counter. The Phlx proposes to change the exercise style of the Index option from American-style to European-style. Under the Exchange's rules, an American-style option is an option contract that may be exercised at any time from the opening of the position until its expiration, whereas a European-style option is an option contract that can be exercised only on the day it expires.[3]

The Exchange stated that it received requests to change the expiration style of the Index from many investors who prefer to trade index options that cannot be exercised except on the day they expire. The Exchange notes that European-style index options have certain advantages, including the elimination of the risk of early exercise. According to the Exchange, investors holding spread positions in European-style index options do not have to be concerned that one leg of a short position will be exercised prior to expiration. Moreover, the Exchange believes that sellers generally will benefit from the European-style exercise feature, because absent concerns about early exercise, they will be free to engage in long-range planning and strategies.

The Exchange has proposed to convert the Index from American-style to European-style exercise on a prospective basis. After Commission approval of the Phlx proposal, the Exchange will add expiration series with European-style exercise following the next expiration date of the Index option. The Exchange will continue trading the American-style option until the listed series expire or no longer have open interest. Except during this wind-down period, the Exchange does not intend to continue trading American-style options side-by-side with European options on the Index.

The Exchange stated that it will provide adequate notice of the new European-style option by way of memoranda to the Phlx membership.[4] In addition, the Exchange intends to preserve the investment community's familiarity with the symbol XOC, which the option has been trading under since its introduction, by retaining the use of this symbol for the new European-style options on the Index and trading the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Phlx Rules 1000(b)(34) and (35).

[4] The Exchange already has begun the process of informing its membership of the impending change in the exercise style of the Index option. *See* Phlx Market Surveillance Release No. 249–96, dated July 1, 1996.

existing American-style options on the Index under the symbol XOV.[5]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[6] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.

As the Commission has stated previously,[7] European-style options, which can be exercised only during a specified period prior to expiration, should facilitate transactions in index options through lower premiums and providing certainty to market participants. Premiums on an index option reflect the risk that a long option holder will exercise before expiration and the option writer will be assigned. Because this risk is not present with European-style index options, premiums on these options may be lower, therefore making them more attractive to investors. Moreover, European-style index options provide the certainty that allows market participants (particularly hedgers, spreaders, and options writers) to engage in long-range planning and strategies. This certainty also should promote trading in index options. By facilitating transactions in Index options in these ways, the Commission believes that the proposal should help to increase the depth and liquidity of the Exchange's stock index option markets.

In addition, the Commission believes that the Exchange has established reasonable procedures designed to change Index options from American-style to European-style exercise without causing undue investor confusion. Specifically, the Phlx plans to implement the change in exercise style on a prospective basis by adding expiration series with European-style exercise following the next expiration date of the Index option. The outstanding American-style series will remain outstanding until their expirations or no open interest in these series exists. As noted above, the Phlx has already advised its membership of the impending change to the European-style expiration feature for Index options upon Commission approval of this proposal, including the phase-in procedures, by means of a memorandum to members.[8] The Phlx, upon issuance of this approval order, will notify its members of the change with the exact date when European-style Index options will be introduced.[9] In addition, the Phlx already has changed the symbol for American-style Index options from XOC to XOV to avoid any confusion.[10]

In sum, the Phlx's procedures are comparable to those approved previously by the Commission in connection with other exchanges' modification of the exercise feature of index options [11] and should, as noted above, provide benefits to investors.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–96–18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21327 Filed 8–20–96; 8:45 am]

BILLING CODE 8010–01–M

[5] The symbol for the American-style Index option was converted from XOC to XOV effective July 8, 1996. *See supra* note 4.

[6] 15 U.S.C. 78f(b).

[7] *See, e.g.,* Securities Exchange Act Release Nos. 31831 (February 5, 1993), 58 FR 8436 (February 12, 1993) (order approving change in exercise style of NYSE Composite Index options from American-style to European-style).

[8] *See supra* note 4.

[9] Telephone conversation between Edith Hallahan, Special Counsel, Phlx, and Sharon Lawson, Senior Special Counsel, SEC, dated August 15, 1996.

[10] *See supra* note 4.

[11] *See, e.g.,* Securities Exchange Act Release Nos. 31831 (February 5, 1993), 58 FR 8436 (February 12, 1993) (order approving change in exercise style of NYSE Composite Index options from American-style to European-style); 26199 (October 19, 1988), 53 FR 43060 (October 25, 1988) (order approving change in exercise style of Amex Major Market Index options from American-style to European-style).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2886]

Kentucky (and Contiguous Counties in Ohio and West Virginia); Declaration of Disaster Loan Area

Boyd County and the contiguous counties of Carter, Greenup, and Lawrence in the Commonwealth of Kentucky; Lawrence County, Ohio; and Wayne County, West Virginia constitute a disaster area as a result of damages caused by severe storms and flooding which occurred on July 31, 1996. Applications for loans for physical damage may be filed until the close of business on October 11, 1996 and for economic injury until the close of business on May 12, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster for physical damage are 288606 for Kentucky; 288706 for Ohio; and 288806 for West Virginia. For economic injury the numbers are 898900 for Kentucky; 899000 for Ohio; and 899100 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 12, 1996.

Philip Lader,

Administrator.

[FR Doc. 96–21301 Filed 8–20–96; 8:45 am]

BILLING CODE 8025–01–P

Boston District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Boston District Advisory Council will hold a public meeting on Thursday, September 12, 1996 at 9:30 a.m. at the SBA, 10 Causeway Street, Room 265, Boston, Massachusetts 02222, to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ms. Mary E. McAleney, District Director, U.S. Small Business Administration, 10 Causeway Street, Room 265, Boston, Massachusetts 02222–1093, (617) 565–5560.

Dated: August 19, 1996.

Michael P. Novelli,

Director, Office of Advisory Council.

[FR Doc. 96–21299 Filed 8–20–96; 8:45 am]

BILLING CODE 8025–01–P

Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on Tuesday, September 24, 1996 from from 9:00 a.m. to 4:00 p.m., at the California Small Business Development Center, 801 K Street, Sacramento, CA 95814.

The purpose of the meeting is to discuss such matters as may be presented by Advisory Board members, staff of the SBA, or other present.

For further information, write or call Mary Ann Holl, SBA, 4th Floor, 409 3rd Street, S.W., Washington, DC 20416, (202) 205–7302.

August 19, 1996.

Michael P. Novelli,

Director, Office of Advisory Council.

[FR Doc. 96–21300 Filed 8–20–96; 8:45 am]

BILLING CODE 8025–01–P

federal register

Wednesday
August 21, 1996

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 42 and 53

Federal Acquisition Regulation; Novation and Related Agreements; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 42 and 53

[FAR Case 95–034]

RIN 9000–AH18

Federal Acquisition Regulation; Novation and Related Agreements

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 facilitate the processing of novation and change-of-name agreements. 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 21, 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 95–034 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Kline at (202) 501–3775 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 95–034.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule is in response to an October 2, 1995, request from the American Bar Association to revise FAR Subpart 42.12. The purpose of the revision is to facilitate the process of novating contracts and provide guidelines for contracting officers while preserving the Government's interests in business combinations affecting its 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 novation agreements in general only affect a relatively small number of large and small business entities. 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 95–034), 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 42 and 53

Government procurement.

Dated: August 15, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 42 and 53 be amended as set forth below:

PART 42—CONTRACT ADMINISTRATION

1. The authority citation for 48 CFR Part 42 and 53 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).

2. Section 42.1203 is revised to read as follows:

42.1203 Processing agreements.

(a) When a firm performing Government contracts wishes the Government to recognize (1) a successor in interest to these contracts or (2) a name change, the contractor shall submit a written request to the responsible contracting officer (see 42.1202).

(b) The responsible contracting officer shall—

(1) Identify and request the contractor to submit the information necessary to evaluate the proposed agreement for recognizing a successor in interest or a name change. This information should include the items identified in 42.1204(e) or 42.1205(a), as applicable;

(2) Notify each contract administration office and contracting office affected by a proposed agreement for recognizing a successor in interest; provide those offices with a list of all affected contracts; and

(3) Request submission of any comments or objections to the proposed transfer within 30 days after notification. Any submission should be accompanied by supporting documentation.

(c) Upon receipt of the necessary information, the responsible contracting officer shall determine whether or not it is in the Government's interest to recognize the proposed successor in interest on the basis of—

(1) The comments received from the affected contract administration offices and contracting offices;

(2) The proposed successor's responsibility under subpart 9.1, Responsible Prospective Contractors; and

(3) Any factor relating to the proposed successor's performance of contracts with the Government, which the Government determines would impair the proposed successor's ability to perform the contract satisfactorily.

(d) The execution of a novation agreement does not preclude the use of any other method available to the contracting officer to resolve any other issues related to a transfer of contractor assets, including the treatment of costs.

(e) Any agreement between the transferor and transferee regarding the assumption of liabilities (e.g., long-term incentive compensation plans, cost accounting standards noncompliances, environmental cleanup costs, and final overheads) should be specifically referenced in the novation agreement.

(f) Before novation and change-of-name agreements are executed, the responsible contracting officer shall ensure that Government counsel has reviewed them for legal sufficiency.

(g) The responsible contracting officer shall

(1) Forward a signed copy of the executed novation or change-of-name agreement to the transferor and to the transferee and

(2) Retain a signed copy in the case file.

(h) Following distribution of the agreement, the responsible contracting officer shall—

(1) Prepare a Standard Form 30, Amendment of Solicitation/Modification of Contract, incorporating a summary of the agreement and attaching a complete list of contracts affected;

(2) Retain the original Standard Form 30 with the attached list in the case file;

(3) Send a signed copy of this Standard Form 30 with attached list to the transferor and to the transferee; and

(4) Send a copy of the Standard Form 30 with attached list to each contract administration office or contracting office involved, which shall be responsible for further appropriate distribution.

3. Section 42.1204 is revised to read as follows:

42.1204 Applicability of novation agreements.

(a) The law (41 U.S.C. 15) prohibits transfer of Government contracts from the contractor to a third party. The Government may, when in its interest, recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of

(1) All the contractor's assets or

(2) The entire portion of the assets involved in performing the contract. (See 14.404–2(l) for the effect of novation agreements after bid opening but before award.) Examples of such transactions include but are not limited to—

(i) Sale of these assets with a provision for assuming liabilities;

(ii) Transfer of these assets incident to a merger or corporate consolidation; and

(iii) Incorporation of a proprietorship or partnership, or formation of a partnership.

(b) A novation agreement is unnecessary when there is a change in the ownership of a contractor as a result of a stock purchase, with no legal change in the contracting party, and where that contracting party remains in control of the assets and is the party performing the contract. However, there may be issues related to the change in ownership that should be addressed in an agreement between the contractor and the Government.

(c) When it is in the Government's interest not to concur in the transfer of a contract from one company to another company, the original contractor remains under contractual obligation to the Government, and the contract may be terminated for reasons of default, should the original contractor not perform.

(d) When considering whether to recognize a third party as a successor in interest to Government contracts, the responsible contracting officer shall identify and evaluate any significant organizational conflicts of interest in accordance with subpart 9.5. If the responsible contracting officer determines that a conflict of interest cannot be resolved, but that it is in the best interest of the Government to approve the novation request, a request for a waiver may be submitted in accordance with the procedures contained in 9.503.

(e) When a contractor asks the Government to recognize a successor in interest, the contractor shall submit to the responsible contracting officer three signed copies of the proposed novation agreement and one copy each, as applicable, of the following:

(1) The document describing the proposed transaction, e.g., purchase/sale agreement or memorandum of understanding.

(2) A list of all affected contracts between the transferor and the Government, showing for each the

(i) Contract number and type,

(ii) Name and address of the contracting office,

(iii) Total dollar value as amended, and

(iv) Approximate remaining unpaid balance.

(3) Evidence of the transferee's capability to perform.

(4) Any other relevant information requested by the responsible contracting officer.

(f) Except as provided in paragraph (g) of this section, the contractor shall provide to the responsible contracting officer one copy of each of the following documents as the documents become available:

(1) An authenticated copy of the instrument effecting the transfer of assets, e.g, bill of sale, certificate of merger, contract, deed, agreement, or court decree.

(2) A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets.

(3) A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets.

(4) An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government contracts.

(5) The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer.

(6) Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, audited by independent accounts.

(7) Evidence that any security clearance requirements have been met.

(8) The consent of sureties on all contracts listed under paragraph (e)(2) of this section if bonds are required, or a statement from the transferor that none are required.

(g) If the Government has acquired the documents during its participation in the pre-merger or pre-acquisition review process, or the Government's interests are adequately protected with an alternative formulation of the information, the responsible contracting officer may modify the list of documents to be submitted by the contractor.

(h) When recognizing a successor in interest to a Government contract is consistent with the Government's interest, the responsible contracting officer shall execute a novation agreement with the transferor and the transferee. It shall ordinarily provide in part that—

(1) The transferee assumes all the transferor's obligations under the contract;

(2) The transferor waives all rights under the contract against the Government;

(3) The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted instead of the guarantee); and

(4) Nothing in the agreement shall relieve the transferor or transferee from compliance with any Federal law.

(i) The responsible contracting officer shall use the following format for agreements when the transferor and transferee are corporations and all the transferor's assets are transferred. This format may be adapted to fit specific cases and may be used as a guide in preparing similar agreements for other situations.

PART 53—FORMS

53.242–1 [Amended]

4. Section 53.242–1 is amended by removing ''42.1203(f)'' and inserting ''42.1203(h)'' in its place.

53.243 [Amended]

5. Section 53.243 is amended in the introductory text by removing ''42.1203(f)'' and inserting ''42.1203(h).''

[FR Doc. 96–21231 Filed 8–20–96; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Wednesday
August 21, 1996

Part III

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Draft Guideline on Testing for Carcinogenicity of Pharmaceuticals; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96D–0235]

International Conference on Harmonisation; Draft Guideline on Testing for Carcinogenicity of Pharmaceuticals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline entitled ''Testing for Carcinogenicity of Pharmaceuticals.'' This draft guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guideline outlines experimental approaches to evaluating the carcinogenic potential of pharmaceuticals to humans that may obviate the necessity for the routine conduct of two long-term rodent carcinogenicity studies.

DATES: Written comments by October 21, 1996.

ADDRESSES: Submit written comments on the draft guideline entitled ''Testing for Carcinogenicity of Pharmaceuticals'' to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the draft guideline are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1012; written requests for single copies of the ICH documents can be submitted to the Manufacturers Assistance and Communication Staff (HFM–42), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The document may also be obtained by mail or FAX by calling the Center for Biologics Evaluation and Research Voice Information System at 1–800–835–4709.

Persons with access to the INTERNET may obtain the document in several ways.

Users of ''Web Browser'' software, such as Mosaic, Netscape, or Microsoft Internet Explorer may obtain this document via the World Wide Web by using the following Uniform Resource Locators (URL's):

http://www.fda.gov/cber/cberftp.html
ftp://ftp.fda.gov/CBER/

The document may also be obtained via File Transfer Protocol (FTP). Requesters should connect to the FDA FTP Server, FTP.FDA.GOV (192.73.61.21). The Center for Biologics Evaluation and Research's (CBER's) documents are maintained in a subdirectory called ''CBER'' on the server. Logins with the user name of anonymous are permitted, and the user's e-mail address should be sent as the password.

The ''READ.ME'' file in that subdirectory describes the available documents which may be available as an ASCII text file (*.TXT), or a WordPerfect 5.1 or 6.x document (*.w51,wp6), or both.

The document can be obtained by ''bounce-back e-mail.'' A message should be sent to: ICH_CARCIN@a1.cber.fda.gov.

Finally, an electronic version of this guideline is available via the U.S. Government Printing Office's ''GPO Access.'' Internet users can access the database through the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Joseph Contrera, Center for Drug Evaluation and Research (HFD–900), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4750.

Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and it is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held on April 30, 1996, the ICH Steering Committee agreed that a draft guideline entitled ''Testing for Carcinogenicity of Pharmaceuticals'' should be made available for public comment. The draft guideline is the product of the Safety Expert Working Group of ICH. Comments are requested on this draft and will be considered by FDA and the Safety Expert Working Group. Ultimately, FDA intends to adopt the ICH Steering Committee's guideline.

Long-term rodent carcinogenicity studies for assessing the carcinogenic potential of pharmaceuticals to humans are currently receiving critical examination. Many investigations have shown that it is possible to provoke a carcinogenic response in rodents by a diversity of experimental procedures, some of which are now considered to have little or no relevance for human risk assessment. It is in keeping with the mission of ICH to examine whether the need for carcinogenicity studies in two species could be reduced without compromising human safety. This draft guideline outlines experimental approaches to the evaluation of carcinogenic potential that may obviate the necessity for the routine conduct of two long-term rodent carcinogenicity studies for those pharmaceuticals that need such evaluation.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA. The agency is now in the process of revising § 10.90(b).

Although this guideline does not create or confer any rights for or on any person and does not operate to bind FDA, it does represent the agency's current thinking on methods for evaluating the carcinogenic activity of pharmaceuticals.

Although not required, FDA would normally provide at least a 75-day comment period and preferably a 90-day comment period to provide interested persons with ample time to review and comment upon this type of action. However, the comment period for this draft guideline has been shortened to 60 days so that comments and scientific data can be received by FDA in time to be discussed at an upcoming ICH meeting involving this guideline.

Interested persons may, on or before October 21, 1996, submit written comments on the draft guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft guideline follows:

Testing for Carcinogenicity of Pharmaceuticals

1. Objective

This document provides guidance on methods for evaluating the carcinogenic activity of pharmaceuticals.

2. Background

The current regulatory requirements for the assessment of the carcinogenic potential of pharmaceuticals in the three regions (E.U., Japan, U.S.) provide for the conduct of long-term carcinogenicity studies in two rodent species, usually the rat and the mouse. Given the cost of bioassays and their extensive use of animals, it is in keeping with the mission of ICH to examine whether the need for carcinogenicity studies in two species could be reduced without compromising human safety.

This guideline should be read in conjunction with other guidelines, especially:

S1.A: Guideline on the Need for Carcinogenicity Studies of Pharmaceuticals.

S1.C: Dose Selection for Carcinogenicity Studies of Pharmaceuticals.

Long-term rodent carcinogenicity studies for assessing the carcinogenic potential of chemicals (including pharmaceuticals) to humans are currently receiving critical examination. Since the early 1970's, many investigations have shown that it is possible to provoke a carcinogenic response in rodents by a diversity of experimental procedures, some of which are now considered to have little or no relevance for human risk assessment. This guideline outlines experimental approaches to the evaluation of carcinogenic potential that may obviate the necessity for the routine conduct of two long-term rodent carcinogenicity studies for those pharmaceuticals that need such evaluation. The question of whether the use of rats or mice alone would result in the loss of information on carcinogenicity relevant to human risk assessment has been addressed by a survey of six pharmaceutical data bases. The data bases were those of the International Agency for Research on Cancer (IARC), the U.S. Food and Drug Administration (FDA), the U.S. Physicians' Desk Reference (PDR), the Japanese Pharmaceutical Manufacturers' Association (JPMA), the EU European Medicines Evaluation Agency (Committee for Proprietary Medicinal Products) (CPMP), and the UK Centre for Medicines Research (CMR). The dimensions of these data bases and the principal conclusions of the analyses can be found in the Proceedings of the Third International Conference (1995) on Harmonization.

Positive results in long-term carcinogenicity studies that are not relevant to the therapeutic use of a pharmaceutical present a dilemma to all parties—regulatory reviewers and companies developing drugs. The conduct of only one long-term carcinogenicity study (rather than two) would, in part, allow resources to be diverted towards other currently evolving experimental approaches. The totality of the data derived from one long-term study and other appropriate experimental investigations contribute to a ''weight of evidence'' approach that should improve the assessment of carcinogenic risk to humans.

3. Scope of the Guideline

The guideline embraces all pharmaceutical agents, including biotechnology-derived pharmaceuticals, that need carcinogenic testing as indicated by Guidelines S1A and S6.

4. The Guideline

4.1 Preamble.

The decision to conduct a long-term carcinogenicity study of a pharmaceutical is made only after the acquisition of certain key units of information, including the results of genetic toxicology (Guidelines S2A and S2B), intended patient population, clinical dosage regimen (Guideline S1A), pharmacodynamics, in animals and in humans (selectivity, dose-response) (Guideline S1C), and repeated-dose toxicology in two species. Repeated-dose toxicology studies in any species (including nonrodents) may indicate that the test compound possesses immunosuppressant properties or hormonal activity known to be a risk factor for humans, and this information should be considered in the design of any further studies for the assessment of carcinogenic potential (see also Note 1).

4.2 Experimental approaches to testing for carcinogenic activity.

Flexibility and judgment should be exercised in the choice of approach. It should be influenced by the information cited in the above preamble. Given the complexity of the process of carcinogenesis, no single experimental approach can be expected to predict accurately the carcinogenic potential of a chemical in humans.

The basic principle:

The basic scheme comprises one long-term rodent carcinogenicity study, plus one other study of the type mentioned in section 4.2.2 (see Note 2).

4.2.1 Choice of species for a long-term carcinogenicity study.

The species selected should be the most appropriate one, based on considerations that may include the following comparative studies in two or more rodent species:

(a) Pharmacology.

(b) Repeated-dose toxicology studies.

(c) Metabolism (see also Guidelines S1C and S3A).

(d) Toxicokinetics (see also Guidelines S1C, S3A, and S3B).

(e) Route of administration (e.g., less common routes such as dermal and inhalation).

In the absence of clear evidence favoring one species, it is recommended that the rat be selected. This view is based on the factors discussed in section 6.

4.2.2 Additional tests for carcinogenic activity in vivo.

(a) Short or medium-term rodent test systems.

Possibilities include the use of models providing insight into carcinogenic endpoints in vivo. These may include models of initiation-promotion in rodents, or transgenic rodents, or new-born rodents (Note 3).

(b) A long-term carcinogenicity study in a second rodent species.

It is still acceptable to conduct a long-term carcinogenicity study in a second rodent species.

5. Mechanistic Studies

Mechanistic studies are often useful for the interpretation of tumor findings in a carcinogenicity study, and to provide a perspective on their relevance to human risk assessment. The choice of investigative study will be dictated by the particular properties of the drug and/or the specific results from carcinogenicity testing. Suggestions include:

5.1. Cellular changes.

Relevant tissues may be examined for changes at the cellular level using morphological, histochemical, or functional criteria. As appropriate, attention may be directed to such changes as the dose-relationships for apoptosis, cell proliferation, liver foci, or changes in intercellular communication.

5.2. Biochemical measurements.

Depending on the putative mode of action, investigations could involve measurements of and dose-dependency of such areas as circulating prolactin, thyroid stimulating hormone, luteinizing hormone, 17β-estradiol, gastrin, cholecystokinin, binding to α2μ-globulin, and growth factors.

In some situations, it may be possible to test a hypothesis of, for example, a hormone imbalance with another study in which the

imbalance has been, at least in part, compensated.

5.3. Considerations for additional genotoxicity testing (see Guidelines S2A and S2B).

Additional genotoxicity testing in appropriate models may be invoked for compounds that were negative in the standard 3-test battery but which have shown effects in a carcinogenicity test with no clear evidence for an epigenetic mechanism. Additional testing can include modified conditions for metabolic activation in in vitro tests or can include in vivo tests measuring genotoxic damage in target organs of tumor induction (e.g., liver UDS test, 32P-postlabeling, mutation induction in transgenes).

5.4. Modified protocols.

Sponsors are encouraged to develop modified protocols that may clarify the mode of action of the test substance. Such protocols might include groups of animals to explore, for example, the consequence of interrupted dosage regimens, or the reversibility of cellular changes after cessation of dosing.

6. General Considerations in the Choice of the Most Appropriate Species

There are several general considerations which, in the absence of other clear indications, suggest that the rat will normally be the species of choice for a bioassay.

6.1. Information from pharmaceutical data bases.

In the analysis of the six data bases, attention was given to data on genetic toxicology, tumor incidence, strain of animal, route and dosage regimen, pharmacological or therapeutic activity, development and/or regulatory status, and, if relevant, reason for termination of development. Inevitably, there was considerable overlap between the data bases, but that is not necessarily an impediment to drawing valid conclusions.

The main overall conclusions from the analysis were:

a. Although very few instances have been identified of mouse tumors being the sole reason for regulatory action concerning a pharmaceutical, data from this species may have contributed to a weight-of-evidence decision and in identifying agents that caused tumors in two rodent species.

b. Of the compounds displaying carcinogenic activity in only one species, the number of ''rat-only'' compounds was about double the number of ''mouse-only'' compounds, implying in a simplistic sense that the rat is more ''sensitive'' than the mouse.

c. As with other data bases accessible in the literature, the pharmaceutical data bases were dominated by the high incidence of rodent liver tumors. The high susceptibility of rodent liver to nongenotoxic chemicals has been the subject of many symposia and workshops. These have concluded that these tumors may not always have relevance to carcinogenic risk in humans and frequently make the use of the rodent for this purpose misleading.

6.2. Potential to study mechanisms.

The carcinogenic activity of nongenotoxic chemicals in rodents is characterized by a high degree of species, strain, and target organ specificity and by the existence of thresholds in the dose-response relationship. Mechanistic studies in recent years have permitted the distinction between effects that are specific to the rodent model and those that are likely to have relevance for humans. Progress has often been associated with increased understanding of species and tissue specificity of receptors and receptor sub-types. Receptor-mediated carcinogenesis is of growing importance. Nearly all of these advances are being made in the rat, and only rarely in the mouse.

6.3. Metabolic disposition.

Neither rats nor mice would seem, on metabolic grounds, to be a priori generally more suitable for the conduct of bioassays. However, much attention is now being given to pharmacokinetic-pharmacodynamic relationships and rapid progress is occurring in knowledge of the P–450 isozymes that mediate the biotransformation of drugs. Nearly all of this research activity is confined to rats and humans. Therefore, in the near future at least, it appears that mice would be less likely to provide metabolic information useful in mechanistic studies.

6.4. Practicality.

Pertinent to the above two topics is the question of feasibility of investigative studies. Size considerations alone put the mouse at a severe disadvantage when it comes to the taking of serial blood samples, microsurgery/catheterization, and the weighing of organs. Blood sampling often requires the sacrifice of the animals, with the result that many extra animals may be required when mice are subject to such investigations.

6.5. Exceptions.

Despite the above considerations, there may be circumstances when the mouse or another rodent species could be justified on mechanistic, metabolic, or other grounds as being a more appropriate species than the rat for human risk assessment.

Notes

Note 1. Data from cell transformation assays can be useful at the compound selection stage. Data exist in the literature for over 200 agents including rodent carcinogens and noncarcinogens that have been tested in both cell transformation assays and in long-term rodent carcinogenicity tests.

Note 2. If the findings of a long-term carcinogenicity study and of genotoxicity tests and other data indicate that a pharmaceutical poses a carcinogenic hazard to humans, a second carcinogenicity study would not be necessary.

Note 3. Several experimental methods are currently under investigation but, thus far, relatively few pharmaceutical agents have been evaluated. During the ICH Step 2 to Step 3 process, i.e., during the open comment period, interested parties are invited to submit information on in vivo models for which there is currently sufficient experience available for human risk assessment. The evaluation will include consideration of animal numbers and welfare. The following list of approaches may be revised in the light of further information.

(a) One rat initiator-promoter model for the detection of hepatocarcinogens (and modifiers of hepatocarcinogenicity) employs an initiator, followed by several weeks' exposure to the test substance. Another multi-organ model employs up to five initiators followed by several months' exposure to the test substance.

(b) Several transgenic mouse assays are currently under evaluation. These include the p53 deficient model, the TG.AC model, the ras H2 model, the Eμ-pim-1 model, the TGF-α model, the XPA deficient model, etc.

(c) Neonatal rodents have been studied since the 1960's. The chemicals tested are mostly genotoxic. A number of nongenotoxic pharmaceutical agents are currently being evaluated.

Other ICH Guidelines Cited

Guideline S2A: Notes for Guidance on Specific Aspects of Regulatory Genotoxicity Tests.

Guideline S2B: A Standard Battery of Genotoxicity Testing of Pharmaceuticals.

Guideline S3A: Notes for Guidance on Toxicokinetics. The Assessment of Systemic Exposure in Toxicity Studies.

Guideline S3B: Guidance on Repeat-Dose Tissue Distribution Studies.

Guideline S6: Preclinical Testing of Biotechnology-derived Pharmaceuticals.

Dated: August 13, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

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New drugs; list consolidation; Federal regulatory review; comments due by 8-27-96; published 6-11-96

Medical devices:
Hematology and pathology devices--
Immunohistochemistry reagents and kits; classification and reclassification; comments due by 8-30-96; published 6-14-96
Humanitarian use devices; comments due by 8-26-96; published 6-26-96

INTERIOR DEPARTMENT

Indian Affairs Bureau

Human services:
Social welfare arrangements with States or other agencies; comments due by 8-30-96; published 7-1-96

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Coastal dunes milk-vetch, etc. (five plants and lizard from Monterey County, CA); comments due by 8-30-96; published 6-26-96

INTERIOR DEPARTMENT

Endangered and threatened species:
Coastal dunes milkvetch, etc. (five plants and lizard from Monterey County, CA); comments due by 8-30-96; published 7-10-96

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
Illinois; comments due by 8-29-96; published 7-30-96

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:
Immigration petitions--
Priority dates for employment-based petitions; comments due by 8-26-96; published 6-27-96

PERSONNEL MANAGEMENT OFFICE

Administrative law judge examination; funding; comments due by 8-28-96; published 7-29-96

STATE DEPARTMENT

Visas; nonimmigrant documentation:
Visa waiver pilot program--
Australia; comments due by 8-28-96; published 7-29-96

TRANSPORTATION DEPARTMENT

Coast Guard

Regattas and marine parades:
Events requiring permits, written notices, or neither; identification; comments due by 8-26-96; published 6-26-96

TRANSPORTATION DEPARTMENT

Federal regulatory review:
Classified information; comments due by 8-30-96; published 7-1-96

Freedom of Information Act; implementation; comments due by 8-26-96; published 6-26-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
de Havilland; comments due by 8-26-96; published 7-16-96
Aviat Aircraft Inc.; comments due by 8-30-96; published 7-9-96
Boeing; comments due by 8-27-96; published 8-12-96
Jetstream; comments due by 8-27-96; published 6-28-96
Short Brothers; comments due by 8-29-96; published 7-12-96
Shorts; comments due by 8-29-96; published 7-12-96

Class D airspace; comments due by 8-26-96; published 7-17-96

Class E airspace; comments due by 8-26-96; published 7-10-96

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
Air brake systems--
Long-stroke brake chambers; comments due by 8-26-96; published 7-11-96
Lamps, reflective devices, and associated equipment--
Heavy truck conspicuity; evaluation plan; comments due by 8-30-96; published 7-1-96

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Pipeline safety:
Natural gas distribution systems; excess flow valve performance standards; customer notification; comments due by 8-26-96; published 6-27-96

TREASURY DEPARTMENT

Fiscal Service

Treasury certificates of indebtedness, notes, and bonds; State and local government series; comments due by 8-26-96; published 7-26-96

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Low income housing credit; available unit rule; comments due by 8-28-96; published 5-30-96

TREASURY DEPARTMENT

Thrift Supervision Office

Corporate governance; Federal regulatory review; comments due by 8-26-96; published 6-25-96

VETERANS AFFAIRS DEPARTMENT

Practice and procedure:
Rulemaking notice-and-comment provisions; comments due by 8-30-96; published 7-1-96

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. 1975/P.L. 104–185

Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (Aug. 13, 1996; 110 Stat. 1700)

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